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IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Ghassan Haj-Hamed, M.D.,	:	
Appellant-Appellant,	:	No. 06AP-351 (C.P.C. No. 05CVF-02-01565)
v.	:	(REGULAR CALENDAR)
State Medical Board of Ohio,	:	
Appellee-Appellee.	:	

JUDGMENT ENTRY

For the reasons stated in the opinion of this court rendered herein on May 24, 2007, appellant's three assignments of error are overruled, and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is affirmed. Costs are assessed against appellant.

PETREE, BRYANT & BOWMAN, JJ.

BY Charles R Petree
Judge Charles R. Petree

BOWMAN, J., retired of the Tenth Appellate District, assigned to active duty under authority of Section 6(C), Article IV, Ohio Constitution.

HEALTH & HUMAN
MAY 30 2007
SERVICES SECTION

HEALTH & HUMAN
MAY 29 2007
SERVICES SECTION

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IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

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Appellant-Appellant,	:	No. 06AP-351 (C.P.C. No. 05CVF-02-01565)
v.	:	(REGULAR CALENDAR)
State Medical Board of Ohio,	:	
Appellee-Appellee.	:	

O P I N I O N

Rendered on May 24, 2007

Graff & Associates, L.P.A., and *Douglas E. Graff*, for appellant.

Marc Dann, Attorney General, and *Kyle C. Wilcox*, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

PETREE, J.

{¶1} Ghassan Haj-Hamed, M.D. ("appellant"), appeals from a judgment of the Franklin County Court of Common Pleas that affirmed an order of the State Medical Board of Ohio ("board") that permanently revoked appellant's certificate to practice medicine and surgery in Ohio. Because the common pleas court did not abuse its discretion by affirming the board's order, we affirm the common pleas court's judgment.

{¶2} After the Kentucky Board of Medical Licensure initiated disciplinary proceedings against Appellant in 2003, the board thereafter initiated its own disciplinary

proceedings against him, which later resulted in a consent agreement between appellant and the board in November 2003.

{¶3} Under this consent agreement, appellant agreed to several probationary terms, conditions, and limitations which, among other things, provided that: (1) he would obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio; (2) he would not administer, dispense, prescribe, or personally furnish any controlled substances as defined by state or federal law; (3) upon request of an agent of the board, he would make his patient records available for review; and (4) he would limit his practice to his employment at Tri-State Urgent Care in Cincinnati, Ohio, where he would "be supervised and monitored on site at all times" by Tariq Sultan, M.D., who would "supervise and monitor Dr. Haj-Hamed and his medical practice" and "review 100% of Dr. Haj-Hamed's patient charts."

{¶4} This consent agreement also provided:

> If, in the discretion of the Secretary and Supervising member of the Ohio Board, Dr. Haj-Hamed appears to have violated or breached any term or condition of this Consent Agreement, the Ohio Board reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including, but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this Consent Agreement.
>
> If the Secretary and Supervising Member of the Ohio Board determine that there is clear and convincing evidence that Dr. Haj-Hamed has violated any term, condition or limitation of this Consent Agreement, Dr. Haj-Hamed agrees that the violation, as alleged, also constitutes clear and convincing evidence that his continued practice presents a danger of immediate and serious harm to the public for purposes of initiating a summary suspension pursuant to R.C. 4731.22(G).

{¶5} On April 29, 2004, pursuant to the board's secretary and the board's supervising member's determination that by clear and convincing evidence appellant violated former R.C. 4731.22(B)[1] and that his continued practice presented a danger of immediate and serious harm to the public, the board, under authority provided in former R.C. 4731.22(G), summarily suspended appellant's certificate to practice medicine and surgery. The board also ordered the immediate closure of appellant's medical offices and ordered the immediate referral of all active patients to other physicians.

{¶6} That same day, by means of a "Notice of Summary Suspension and Opportunity for Hearing," besides informing appellant of the summary suspension of his certificate to practice medicine and surgery, the board also informed him that it intended to discipline him for alleged violations of the consent agreement. According to the board's notice, appellant allegedly violated the consent agreement because, among other things: (1) he had not been supervised by Dr. Sultan in the manner required by the consent agreement; (2) through his attorney, he failed to permit the board's agents to inspect patient records; and (3) he prescribed a controlled substance when he did not hold a valid Drug Enforcement Administration ("DEA") certificate of registration.

{¶7} At an administrative hearing that followed, a hearing examiner determined that she lacked authority to enter a ruling as to the propriety of the board's summary suspension order. However, notwithstanding this determination, the state was permitted to proffer testimony and argument into the record as to the propriety of appellant's summary suspension.

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[1] Since April 29, 2004, R.C. 4731.22 has been amended several times. See (2004) Sub.H.B. No. 126, effective September 23, 2004; (2004) Am.Sub.S.B. No. 80, effective April 7, 2005; and (2006) Am.Sub.H.B. No. 530, effective June 30, 2006.

{¶8} Following an adjudication hearing, the hearing examiner issued a "Report and Recommendation," wherein she concluded, among other things, that: appellant knowingly and repeatedly violated terms of the consent agreement; he violated conditions of limitation placed by the board upon his certificate to practice medicine and surgery; he had proven himself to be unwilling to comply with the board's mandates; he was deceptive and obstructive in his dealings with the board; and the board could not effectively regulate him. The hearing examiner further concluded that permanent revocation was warranted.

{¶9} On October 13, 2004, upon the motion of a board member, the board remanded the matter to a hearing examiner for the narrow purpose of considering: (1) whether the board's secretary and supervising member determined that there was clear and convincing evidence that appellant violated former R.C. 4731.22(B); (2) whether the board's secretary and supervising member determined that appellant's continued practice presented a danger of immediate and serious harm to the public; (3) whether the board's secretary and supervising member recommended suspension of appellant's certificate without a prior hearing; and (4) whether the board complied with other procedural requirements of the Ohio Revised Code in issuing the summary suspension order.

{¶10} After another administrative hearing was held, a hearing examiner issued a "Report of Remand," in which the hearing examiner concluded that the board's summary suspension of appellant's certificate to practice medicine and surgery had been properly and lawfully issued in accordance with the requirements of former R.C. 4731.22(G).

{¶11} On January 12, 2005, the board amended the hearing examiner's findings of fact in the "Report of Remand" to include findings that:

> 1. The secretary and supervising member, at the time they made the recommendation to summarily suspend the license of Dr. Haj-Hamed, had clear and convincing evidence that Dr. Haj-Hamed had violated the terms of the consent agreement,
>
> and
>
> 2. Therefore, his continued practice of medicine constituted a danger of immediate and serious harm to the public, as provided in the consent agreement.

Thereafter, the board ordered the permanent revocation of appellant's certificate to practice medicine and surgery in Ohio.

{¶12} From the board's order of permanent revocation, appellant appealed to the Franklin County Court of Common Pleas. While appellant's appeal was before the common pleas court, he moved for a stay of the board's order of permanent revocation, and the common pleas court denied this motion.

{¶13} From the common pleas court's judgment affirming the board's order of permanent revocation, appellant now appeals and assigns three errors for our consideration:

> I. THE COMMON PLEAS COURT ERRED BY ALLOWING AN ALLEGED UNCORRECTED "TYPOGRAPHICAL ERROR" TO SUMMARILY SUSPENSION [sic] APPELLANT'S LICENSE TO PRACTICE.
>
> II. THE COMMON PLEAS COURT ERRED THAT APPELLANT ISSUED A PRESCRIPTION FOR A CONTROLLED SUBSTANCE AS ALLEGED BY THE BOARD. [sic.]
>
> III. THE COMMON PLEAS COURT ERRED TO ALLOW THE BOARD TO VIOLATE IT [sic] RULES AND APPELLANT'S DUE PROCESS RIGHTS BY THE USE OF A SURPRISE EXPERT WITNESS.

{¶14} Under R.C. 119.12, when a common pleas court reviews an order of an administrative agency, it must consider the entire record to determine whether the agency's order is supported by reliable, probative, and substantial evidence and is in accordance with law. *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 110-111; *Andrews v. Bd. of Liquor Control* (1955), 164 Ohio St. 275, 280.

{¶15} In *Our Place, Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St.3d 570, the Supreme Court of Ohio explained what constitutes reliable, probative, and substantial evidence under R.C. 119.12:

> The evidence required by R.C. 119.12 can be defined as follows: (1) "Reliable" evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) "Probative" evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) "Substantial" evidence is evidence with some weight; it must have importance and value.

Id. at 571. (Footnotes omitted.)

{¶16} The common pleas court's "review of the administrative record is neither a trial *de novo* nor an appeal on questions of law only, but a hybrid review in which the court 'must appraise all the evidence as to the credibility of the witnesses, the probative character of the evidence, and the weight thereof.' " *Lies v. Ohio Veterinary Med. Bd.* (1981), 2 Ohio App.3d 204, 207, quoting *Andrews*, at 280. In its review, the common pleas court must give due deference to the administrative agency's resolution of evidentiary conflicts, but the findings of the agency are not conclusive. *Conrad*, at 111.

{¶17} An appellate court's review of an administrative decision is more limited than that of a common pleas court. *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d

619, 621, rehearing denied, 67 Ohio St.3d 1439. In *Pons*, the Supreme Court of Ohio explained:

> * * * While it is incumbent on the trial court to examine the evidence, this is not a function of the appellate court. The appellate court is to determine only if the trial court has abused its discretion, i.e., being not merely an error of judgment, but perversity of will, passion, prejudice, partiality, or moral delinquency. Absent an abuse of discretion on the part of the trial court, a court of appeals may not substitute its judgment for those of the medical board or a trial court. Instead, the appellate court must affirm the trial court's judgment. * * *

Id. at 621. See, also, *Smith v. State Liquor Control Comm.* (Dec. 10, 1998), Athens App. No. 98CA03, at fn. 1.[2]

{¶18} An appellate court does, however, have plenary review of questions of law. *Chirila v. Ohio State Chiropractic Bd.* (2001), 145 Ohio App.3d 589, 592, citing *Steinfels v. Ohio Dept. of Commerce, Div. of Securities* (1998), 129 Ohio App.3d 800, 803, appeal not allowed (1999), 84 Ohio St.3d 1488.

{¶19} In *Pons*, supra, the Supreme Court of Ohio further directed:

> * * * [W]hen reviewing a * * * board's order, courts must accord due deference to the board's interpretation of the technical and ethical requirements of its profession. The policy reasons for this was noted in *Arlen v. State* (1980), 61 Ohio St.2d 168, 173, 15 O.O.3d 190, 194, 399 N.E.2d 1251, 1254-1255: " '* * * The purpose of the General Assembly in providing for administrative hearings in particular fields was to facilitate such matters by placing the decision on facts with boards or commissions composed of [people] equipped with the necessary knowledge and experience pertaining to a particular field. * * *' " (Quoting *Farrand v. State Med. Bd.*

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[2] In *Smith*, the Fourth District Court of Appeals observed that in *Brown v. Ohio Bur. of Emp. Servs.* (1994), 70 Ohio St.3d 1, reconsideration denied, 70 Ohio St.3d 1448, "the Ohio Supreme Court inexplicably deviated from its prior course by phrasing the standard of review facing the court of appeals as being whether the *common pleas court's* decision was supported by reliable, probative and substantial evidence." Id. (Emphasis sic.)

> [1949], 151 Ohio St. 222, 224, 39. O.O. 41, 42, 85 N.E.2d 113, 114.

Id. at 621-622.

{¶20} Appellant's first assignment of error asserts that the common pleas court abused its discretion by allowing an uncorrected "typographical error" to serve as grounds to summarily suspend appellant's license to practice medicine and surgery.

{¶21} Division (G) of former R.C. 4731.22 provided:

> If the secretary and supervising member determine that there is clear and convincing evidence that an individual has violated division (B) of this section and that the individual's continued practice presents a danger of immediate and serious harm to the public, they may recommend that the board suspend the individual's certificate to practice without a prior hearing. Written allegations shall be prepared for consideration by the board.
>
> The board, upon review of those allegations and by an affirmative vote of not fewer than six of its members, excluding the secretary and supervising member, may suspend a certificate without a prior hearing. A telephone conference call may be utilized for reviewing the allegations and taking the vote on the summary suspension.
>
> * * * The order [of suspension] shall not be subject to suspension by the court during pendency of any appeal filed under section 119.12 of the Revised Code. If the individual subject to the summary suspension requests an adjudicatory hearing by the board, the date set for the hearing shall be within fifteen days, but not earlier than seven days, after the individual requests the hearing, unless otherwise agreed to by both the board and the individual.
>
> Any summary suspension imposed under this division shall remain in effect, unless reversed on appeal, until a final adjudicative order issued by the board pursuant to this section and Chapter 119. of the Revised Code becomes effective. The board shall issue its final adjudicative order within sixty days after completion of its hearing. A failure to issue the order within sixty days shall result in dissolution of the

> summary suspension order but shall not invalidate any subsequent, final adjudicative order.

{¶22} Here, in a file memorandum, the board's secretary and its supervising member stated that there was clear and convincing evidence that appellant violated former R.C. 4731.22(B)(16), and that his continued practice presented a danger of immediate and serious harm to the public. Under former R.C. 4731.22(B)(16), a certificate holder's failure to pay license renewal fees properly may be a basis for disciplinary action against a certificate holder.

{¶23} Appellant claims that, prior to the board's summary suspension of his certificate to practice medicine and surgery, he had not failed to pay his license renewal fees, and he asserts that the board's secretary and its supervising member's recommendation for summary suspension therefore lacked a legitimate foundation. Appellant thus reasons that the board was without a justifiable basis to summarily suspend his certificate to practice medicine.

{¶24} Appellant further asserts that the file memorandum constitutes the only evidence to support the board's secretary and supervising member's recommendation for summary suspension, that this file memorandum identifies division (B)(16) of former R.C. 4731.22 as the grounds for summary suspension, and that division (B)(16) is inapposite under the facts of this case. Therefore, appellant contends that the record lacks reliable, probative, and substantial evidence to support a summary suspension of his certificate to practice medicine and surgery. Additionally, because the board's order purportedly is not supported by reliable, probative, and substantial evidence, appellant further asserts that the common pleas court abused its discretion by affirming the board's summary suspension of his certificate to practice medicine and surgery.

{¶25} The board asserts, however, that the board's secretary and supervising member's reference to division (B)(16) in the file memorandum was a typographical error. The board further asserts that other evidence establishes that division (B)(15) of former R.C. 4731.22, which permitted the board to discipline a certificate holder for violating conditions of limitations placed upon a certificate to practice medicine and surgery, was the actual basis for the board's secretary and supervising member's recommendation for summary suspension of appellant's certificate to practice medicine and surgery.

{¶26} Appellant's claim that the file memorandum constituted the only evidence to support the board's secretary and supervising member's recommendation for summary suspension is not well-taken. Although the file memorandum is evidence that the common pleas court properly should have considered in its hybrid review, the common pleas court was not solely limited to the file memorandum when it considered appellant's claim that the board lacked an adequate basis to summarily suspend his certificate to practice medicine and surgery. See *In re Bolton Convalescent Home v. Ohio Dept. of Human Services* (Feb. 28, 1995), Franklin App. No. 94APE08-1228 (finding no abuse of discretion by a common pleas court because it looked to a report of final settlement when considering whether a waiver form constituted reliable, probative, and substantial evidence); see, also, R.C. 119.12 (providing that the common pleas court "may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and such additional evidence as the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law"); *Conrad*, supra, at 110-111.

{¶27} In *In re Bolton*, a dispute arose concerning an audit of Medicaid-covered nursing home services. Relying on a waiver that the Department of Human Services asserted contained a typographical error, the appellant claimed that this waiver was the only reliable, probative, and substantial evidence in the record and that execution of this waiver created a binding contract that clearly and unambiguously indicated that money was owed to appellant, rather than to the Department of Human Services.

{¶28} In *In re Bolton*, this court stated:

> We do not believe the trial court was constrained to accept appellant's assertion that the only reliable, probative, and substantial evidence was the waiver. An examination of the waiver itself indicates that it contains a request for implementation of the final settlement for the reimbursement period in question. Therefore, it was not an abuse of discretion for the trial court to find that the waiver requested implementation of the final settlement, and to look to the report of final settlement in determining that the $12,906.51 was due to ODHS and not appellant.

Id.

{¶29} Applying the reasoning of *In re Bolton*, we cannot conclude that in this case the common pleas court was constrained to accept appellant's assertion that division (B)(16) of former R.C. 4731.22 constituted the foundation of the board's secretary and supervising member's recommendation for summary suspension of appellant's certificate to practice medicine and surgery. Furthermore, applying the reasoning of *In re Bolton*, we also cannot conclude that the common pleas court was solely limited to reviewing the file memorandum when it considered whether there was reliable, probative, and substantial evidence to support a finding that division (B)(15) of former R.C. 4731.22, rather than division (B)(16), constituted the grounds for the board's secretary and supervising

member's recommendation for summary suspension of appellant's certificate to practice medicine and surgery.

{¶30} As recorded in the minutes of the board's meeting of January 12, 2005, the recollection of Dr. Kumar, a board member, supports a conclusion that division (B)(16) was not the basis for the board's secretary and supervising member's recommendation to the board. These minutes state in part:

> Dr. Kumar stated that he very clearly remembers when this was discussed over the telephone conference. The matter of non-payment of dues didn't enter into the discussion. When he voted for the summary suspension at that time, the issue was not the non-payment of dues at all. It was for the fact that Dr. Haj-Hamed did not abide by the terms of the Consent Agreement. The summary suspension was strictly on that process. Dr. Kumar stated that the reference to (B)(16) in the memorandum in question was merely a typographical error.

{¶31} Evidence documenting the format used during the telephone conference call where the matter of appellant's summary suspension was discussed with board members also supports a finding that division (B)(16) of former R.C. 4731.22 was not the basis for the summary suspension. According to this evidence, the president of the board informed board members:

> Proceeding with the business at hand, the Secretary and the Supervising Member of the State Medical Board have determined that, pursuant to the terms of the November 14, 2003, Consent Agreement between Dr. Haj-Hamed and the State Medical Board of Ohio, there is clear and convincing evidence that Dr. Haj-Hamed has violated Division (B)(15) of section 4731.22, Ohio Revised Code, and that his continued practice presents a danger of immediate and serious harm to the public. They therefore recommend that the Board suspend his certificate without a prior hearing. Copies of a proposed "Notice of Summary Suspension and Opportunity For Hearing" describing the basis for this determination have been distributed to all Board members. Each Board member

> will now be given the opportunity to review the Proposed Notice.

{¶32} Moreover, the testimony of William J. Schmidt, assistant executive director of the board, further supports a finding that violations of the consent agreement by appellant, and not his failure to pay license renewal fees, constituted grounds for the summary suspension of his certificate to practice medicine and surgery. Mr. Schmidt testified that on April 26, 2004, he and Doug Edwards, an investigator supervisor, went to the West Chester office of Tri-State Urgent Care after Mr. Edwards earlier had learned that Dr. Tariq Sultan's supervision of appellant did not appear to comply with the terms of the consent agreement because Dr. Sultan was not "on-site at all times" when appellant had been working at the clinic. (July 29, 2004 Tr., 213.) Mr. Schmidt testified that due to a disagreement with appellant's attorney concerning what steps were required for Mr. Schmidt and Mr. Edwards to have access to patient records, he and Mr. Edwards were denied access to patient records during this visitation to the clinic. (July 29, 2004 Tr., 216-218.)

{¶33} Mr. Schmidt also testified that, on April 27, 2004, an investigative conference was held with appellant, the board's secretary and supervising member, among others, in attendance. (Nov. 9, 2004 Tr., 33-34.) After this investigative conference concluded, Mr. Schmidt met with the board's secretary and its supervising member, and Mr. Schmidt provided information that was collected during an investigation of appellant. (Nov. 9, 2004 Tr., 35-39, 63-66.) According to Mr. Schmidt, when he met with the board's secretary and supervising member, there was no evidence presented regarding appellant's failure to pay his license renewal fees. (Nov. 9, 2004 Tr., 100.)

{¶34} Such testimony supports a conclusion that that appellant's failure to abide by limitations placed upon his certificate to practice medicine and surgery, a violation of division (B)(15) of former R.C. 4731.22, constituted the basis for the board's summary suspension of appellant's certificate to practice medicine.

{¶35} Finally, the notice that the board issued to appellant wherein the board informed him that the board's secretary and its supervising member determined by clear and convincing evidence that appellant violated division (B)(15) of former R.C. 4731.22, not (B)(16), and wherein the board outlined alleged violations of the consent agreement, also supports a conclusion that division (B)(15), not division (B)(16), served as the basis for the board's secretary and supervising member's recommendation for summary suspension of appellant's certificate. According to Mr. Schmidt, even though the board's secretary and supervising member had not seen a copy of this notice at the time that they made their recommendation to the board, the board's secretary and supervising member had reviewed information embodied in the notice. (Nov. 9, 2004 Tr., 91.)

{¶36} In summary, because the file memorandum was not the only evidence that the common pleas court properly could consider in reaching its determination, we cannot conclude that the common pleas court abused its discretion by finding that an apparent typographical error in the file memorandum did not change the nature of the proceedings or the outcome of the disciplinary proceedings against appellant. Moreover, because evidence and reasonable inferences drawn therefrom support a view that the board's secretary and supervising member by clear and convincing evidence found a violation of division (B)(15) of former R.C. 4731.22, and absent any showing that this evidence is not reliable, probative, or substantial, we conclude that the common pleas court did not abuse

its discretion by finding that reliable, probative, and substantial evidence supported the board's order of summary suspension.

{¶37} Accordingly, for the reasons set forth above, we overrule appellant's first assignment of error.

{¶38} Appellant's second assignment of error asserts that the common pleas court abused its discretion by finding that appellant issued a prescription as alleged by the board.

{¶39} At an administrative hearing, Stephanie Sheard, a pharmacist and the pharmacy manager at a retail store, testified that on February 10, 2004, she received a prescription for a controlled substance, Lomotil, 2.5 mg. strength, by way of a telephone call from a person, who identified himself as appellant. (July 29, 2004 Tr., 39-40.) Ms. Sheard testified that, based on this telephone call from appellant, she generated a telephone prescription and wrote in a DEA number for appellant. (July 29, 2004 Tr., 40.) Ms. Sheard explained that "[a] lot of times prescriptions are phoned in via voicemail or even if prescriptions are handwritten and brought into the pharmacy by a guest, if there's a control on the prescription, sometimes it's either neglected by the doctor or the nurse with the DEA number on the prescription. So I obtained that from our pharmacy records and our computers." Id.

{¶40} Later, on cross-examination, Ms. Sheard amplified her testimony, and testified that she was unsure whether she requested appellant's DEA number or whether she received it from the computer. (July 29, 2004 Tr., 51.) However, in her testimony, Ms. Sheard repeatedly testified that she took a prescription by telephone. (July 29, 2004 Tr., 52, 70-71.)

{¶41} According to Ms. Sheard, the patient for whom the Lomotil had been prescribed later presented a handwritten prescription for Lomotil and another medication on the same prescription form. Ms. Sheard then made a note that only one prescription for Lomotil would be filled. (July 29, 2004 Tr., 43-44.) When questioned on cross-examination, however, Ms. Sheard conceded that in filling the telephone prescription and the handwritten prescription she probably made errors. (July 29, 2004 Tr., 67.)

{¶42} According to Ms. Sheard, after board investigators contacted appellant, he contacted Ms. Sheard and informed her that he did not write a prescription for a controlled substance. (July 29, 2004 Tr., 45.) Ms. Sheard testified: "[Dr. Haj-Hamed] said he thought he wrote for Imodium. And Imodium and Lomotil are two totally different medications. So Lomotil is – is a control and Imodium is an over-the-counter product that is a noncontrolled substance. They are both to treat diarrhea, but they are not the same medication." (July 29, 2004 Tr., 45-46.)

{¶43} For his part, appellant testified that he did not contact the pharmacy where Ms. Sheard worked by telephone to order a prescription for a patient. (July 30, 2004 Tr., 391.) Appellant testified:

> I don't know who talked to her, if somebody talked to her. She – She said I called her. If you ask my nurses, I never call in prescription myself. I usually have the staff do that, if I have to.
>
> And I'd like to know, did she answer the phone herself or somebody else did for her? And I'd like to know the name of who that staff that answered the phone. Because usually pharmacists do not answer the phone. The staff would. If we go back to that day, I would like to know who worked that day and who answered the phone and gave her the phone to say Dr. Hamed is on the line.

> I was telling that – Mr. Graff that I'm going to go to Cincinnati Bell and prove to you that there was no phone call came out of that location to that pharmacist. I'm positive.

(July 30, 2004 Tr., 391-392.)

{¶44} Although appellant testified that he wrote medications and directions on a prescription form and gave this writing to a patient, he testified that he did not write a prescription for Lomotil. (July 30, 2004 Tr., 380, 382.) According to appellant, the writing, which was not a prescription, was "just a hint for the pharmacist and the patient to what to pick up." [sic.] (July 30, 2004 Tr., 382.) Appellant further testified: "Otherwise, I would have signed it." Id.

{¶45} Appellant also testified that he called Ms. Sheard after a board investigator had met with her. Appellant testified:

> I called and asked – I didn't know who the name. I said, "I want to talk to the manager there," because I want to know if I ever wrote controlled substance at that location. It happened that she is the one that talked to me that day.
>
> She said, "I'm the manager and I'm the one that filled that prescription." I said, "What's the patient name?" She gave me the name. I said, "Well, I want you to write down what happened." She said, "I already did and gave it to the investigator." I said, "Would you write it again for me?" She said, "No. I already did it once. I don't want to deal with it."
>
> But I said, "But you don't know I don't have a DEA number? Don't you know I don't have a DEA license? Don't you know I never wrote controlled substance? You're getting prescription for me for a few months. I never wrote controlled substance? Why now? Why the Lomotil?" She said, "Oh, I'm sorry. I didn't mean to cause trouble, but that's what happened. I thought it was you."

(July 30, 2004 Tr., 392-393.)

{¶46} In *Conrad*, supra, the Supreme Court of Ohio instructed that in undertaking its hybrid form of review, a common pleas court "must give due deference to the administrative resolution of evidentiary conflicts." Id. at 111. The *Conrad* court explained:

> * * * For example, when the evidence before the court consists of conflicting testimony of approximately equal weight the court should defer to the determination of the administrative body, which, as the factfinder, had the opportunity to observe the demeanor of the witnesses and weigh their credibility. However, the findings of the agency are by no means conclusive.
>
> Where the court, in its appraisal of the evidence, determines that there exists legally significant reasons for discrediting certain evidence relied upon by the administrative body, and necessary to its determination, the court may reverse, vacate, or modify the administrative order. Thus, where a witness' testimony is internally inconsistent, or is impeached by evidence of prior inconsistent statement, the court may properly decide that such testimony should be given no weight. Likewise, where it appears that the administrative determination rests upon inferences improperly drawn from the evidence adduced, the court may reverse the administrative order.

Id. at 111-112.

{¶47} Here, the hearing examiner heard conflicting testimony from Ms. Sheard and appellant concerning whether appellant ordered a prescription for a controlled substance by way of a telephone call. The hearing examiner also had an opportunity to observe the demeanor of Ms. Sheard and appellant and had an opportunity to weigh the credibility of Ms. Sheard's testimony that appellant called the pharmacy and ordered a prescription for a controlled substance.

{¶48} Applying the general principles set forth in *Conrad*, we cannot conclude that the common pleas court abused its discretion by not finding legally significant reasons for discrediting the testimony of Ms. Sheard. Accordingly, we cannot conclude that the

common pleas court erred by finding reliable, probative, and substantial evidence supported a conclusion that appellant issued a prescription for a controlled substance.

{¶49} For the reasons set forth above, we therefore overrule appellant's second assignment of error.

{¶50} Appellant's third assignment of error asserts that the common pleas court abused its discretion by finding that the board did not violate appellant's right to due process by permitting a "surprise witness" to testify.

{¶51} "[T]he Due Process Clause provides that certain substantive rights—life, liberty, and property—cannot be deprived except pursuant to constitutionally adequate procedures. The categories of substance and procedure are distinct." *Cleveland Bd. of Edn. v. Loudermill* (1985), 470 U.S. 532, 541, 105 S.Ct. 1487. See, also, *Sorrell v. Thevenir* (1994), 69 Ohio St.3d 415, 422-423, citing *Direct Plumbing Supply Co. v. Dayton* (1941), 138 Ohio St. 540, 544 (stating that the "[t]he 'due course of law' provision [in Section 16, Article I, of the Ohio Constitution] is the equivalent of the 'due process of law' provision in the Fourteenth Amendment to the United States Constitution"); *Chirila*, supra, at 593, citing *LTV Steel Co. v. Indus. Comm.* (2000), 140 Ohio App.3d 680, 688 (stating that "[d]ue process rights guaranteed by the United States and Ohio Constitutions apply in administrative proceedings"); *Althof v. Ohio State Bd. of Psychology*, Franklin App. No. 05AP-1169, 2007-Ohio-1010, at ¶13.

{¶52} " 'In a due process challenge pursuant to the Fourteenth Amendment, the first inquiry is whether a protected property or liberty interest is at stake.' " Id. at ¶15, quoting *State ex rel. Haylett v. Ohio Bur. of Workers' Comp.* (1999), 87 Ohio St.3d 325, 331, citing *Am. Mfrs. Mut. Ins. Co. v. Sullivan* (1999), 526 U.S. 40, 59, 119 S.Ct. 977, 989;

Mathews v. Eldridge (1976), 424 U.S. 319, 96 S.Ct. 893. "[O]nce it is determined that the Due Process Clause applies, 'the question remains what process is due.' " *Loudermill*, supra, at 541, quoting *Morrisey v. Brewer* (1972), 408 U.S. 471, 481, 92 S.Ct. 2593.

{¶53} Here, as a licensed professional, appellant had a protected property interest in the practice of medicine and surgery. See *Haver v. Accountancy Bd. Ohio*, Franklin App. No. 05AP-280, 2006-Ohio-1162, appeal not allowed, 110 Ohio St.3d 1440, 2006-Ohio-3862, at ¶47 (concluding that revocation of a certified public accountant's certificate implicated a protected property right under the Fourteenth Amendment to the United States Constitution and under Section 16, Article I, Ohio Constitution); *Althof*, at ¶17 (concluding that a psychologist had a protected property right in the practice of psychology). Accord *Chirila*, supra, at 596, citing *Sohi v. Ohio State Dental Bd.* (1998), 130 Ohio App.3d 414, 422, dismissed, appeal not allowed (1999), 85 Ohio St.3d 1407, certiorari denied (2000), 528 U.S. 1119, 120 S.Ct. 940 (finding that under the first fact of the test in *Mathews*, supra, the appellant had a protected property interest in his professional license); *Carothers v. Ohio Bd. of Speech-Language Pathology and Audiology*, Geauga App. No. 2004-G-2559, 2004-Ohio-6695, at ¶10, citing *Chirila*, at 596, citing *Sohi*, at 422 (acknowledging "that an individual has a protected property interest in a professional license").

{¶54} Recently, in *Althof*, this court observed:

> " '[D]ue process' is a flexible concept – that the processes required by the Clause with respect to the termination of a protected interest will vary depending upon the importance attached to the interest and the particular circumstances under which the deprivation may occur." *Walters v. Natl. Assn. of Radiation Survivors* (1985), 473 U.S. 305, 320, 105 S.Ct. 3180. However, "[f]or all its consequences, 'due process' has never been, and perhaps can never be,

> precisely defined. '[U]nlike some legal rules,' * * * due process 'is not a technical conception with a fixed content unrelated to time, place and circumstances.' * * * Rather, the phrase expresses the requirement of 'fundamental fairness,' a requirement whose meaning can be as opaque as its importance is lofty." *Lassiter v. Dept. of Social Servs. of Durham Cty., North Carolina* (1981), 452 U.S. 18, 24, 101 S.Ct. 2153, rehearing denied, 453 U.S. 927, 102 S.Ct. 889. (Citation omitted.) "In defining the process necessary to ensure 'fundamental fairness,' [the Supreme Court of the United States] [has] recognized that the Clause does not require that 'the procedures used to guard against an erroneous deprivation ... be so comprehensive as to preclude any possibility of error,' * * * and in addition [the Supreme Court of the United States] [has] emphasized that the marginal gains from affording an additional procedural safeguard often may be outweighed by the societal cost of providing such a safeguard." *Walters*, at 320-321. (Citations omitted.)

Id. at ¶14.

{¶55} Here, the issue raised by appellant in his third assignment of error resolves to whether the common pleas court abused its discretion by finding that the hearing examiner did not act in a fundamentally unfair manner by permitting Timothy J. Benedict, assistant executive director of the Ohio Board of Pharmacy, who had not been identified as an expert witness by the state prior to the administrative hearing, to testify at an administrative hearing. At the hearing, over appellant's objections, Mr. Benedict testified as an expert witness for the limited purpose of establishing that the written instructions on appellant's writing were consistent with the dosing instructions for Lomotil and not consistent with the dosing instructions for Immodium. Prior to Mr. Benedict's testimony, the hearing examiner offered to continue the matter, and later granted a ten-minute recess. (July 29, 2004 Tr., 180, 182-183.)

{¶56} Ohio Adm.Code 4731-13-18(D), effective February 28, 2004, provides in part:

> Upon written motion of a party or upon the hearing examiner's initiative, the hearing examiner shall issue an order setting forth a schedule by which the parties shall exchange hearing exhibits, identify lay and expert witnesses and exchange written reports from expert witnesses.
>
> * * *
>
> (2) Absent extraordinary circumstances, the failure of a party to identify a lay or expert witness under the terms of the hearing examiner's order shall result in the exclusion of that witness' testimony at hearing.
>
> (3) Absent extraordinary circumstances, the failure of a party to produce a written report from an expert witness under the terms of the hearing examiner's order shall result in the exclusion of the witness' expert testimony at hearing.

{¶57} Under Ohio Adm.Code 4731-13-18(G), "[a]ny witness who intends to testify as an expert, including the respondent, must submit a written report. A written report by an expert shall set forth the opinions to which the expert witness will testify and the bases for such opinions. This paragraph will not preclude the respondent from testifying as a fact witness."

{¶58} In the present case, although the hearing examiner determined that Mr. Benedict's testimony would be relevant, the hearing examiner did not identify what "extraordinary circumstances" under Ohio Adm.Code 4731-13-18(D)(2) existed to justify the state's failure to identify Mr. Benedict as an expert witness before the administrative hearing. Thus, we agree with appellant that the hearing examiner violated Ohio Adm.Code 4731-13-18(D)(2) by failing to exclude Mr. Benedict's testimony as required under Ohio Adm.Code 4731-13-18(D)(2).

{¶59} However, although appellant's claim that the hearing examiner violated Ohio Adm.Code 4731-13-18(D)(2) is well-taken, he fails to identify how the testimony of Mr. Benedict prejudiced him or how foreknowledge of Mr. Benedict's testimony would have benefited him in the preparation of his defense. Notwithstanding the hearing examiner's failure to comply with Ohio Adm.Code 4731-13-18(D)(2), absent any claim of identifiable prejudice by appellant, we cannot conclude that, under these facts and circumstances, the hearing examiner's violation of Ohio Adm.Code 4731-13-18(D)(2) necessarily constitutes a due process violation. See *In re C.W.*, Medina App. No. 06CA003-M, 2006-Ohio-5635, at ¶9 (stating that "[t]o demonstrate a reversible denial of due process, as with any alleged error on appeal, an appellant typically must make a showing of identifiable prejudice").

{¶60} To determine whether appellant's right to due process was violated, besides considering whether appellant has shown identifiable prejudice, we must also consider whether the procedure employed by the hearing examiner in this case involved such a probability that prejudice would result. See, generally, *Estes v. Texas* (1965), 381 U.S. 532, 542, 85 S.Ct. 1628, rehearing denied, 382 U.S. 875, 86 S.Ct. 18 (stating that "[i]t is true that in most cases involving claims of due process violations we require a showing of identifiable prejudice to the accused. Nevertheless, at times a procedure employed by the State involves such a probability that prejudice will result that it is deemed inherently lacking in due process").

{¶61} Here, because the hearing examiner offered to continue the matter and granted a brief recess prior to Mr. Benedict's testimony, we cannot conclude that the procedure employed by the hearing examiner in this case was inherently lacking in due

process. Consequently, because we cannot conclude that the procedure employed by the hearing examiner was inherently lacking in due process, and absent any claim of identifiable prejudice by appellant, we cannot conclude that, under the facts and circumstances of this case, appellant was denied due process of law under the United States or Ohio Constitutions.

{¶62} Accordingly, having concluded that appellant was not denied due process of law, we also cannot conclude that the common pleas court abused its discretion by finding that the board did not violate appellant's right to due process by permitting Mr. Benedict to testify.

{¶63} For the reasons set forth above, appellant's third assignment of error is therefore overruled.

{¶64} Accordingly, for the reasons set forth above, appellant's three assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BRYANT and BOWMAN, JJ., concur.

BOWMAN, J., retired of the Tenth Appellate District, assigned to active duty under authority of Section 6(C), Article IV, Ohio Constitution.

GHASSAN HAJ-HAMED, M.D.
4056 Clifton Ridge
Cincinnati, Ohio 45220

vs.

STATE MEDICAL BOARD OF OHIO
77 South High Street, 17th Floor
Columbus, Ohio 43215-6127,

Appellee.

Case No. _____

Notice of Appeal of
Common Pleas Case No.
05-CVF 02-01565

FILED
COURT OF APPEALS
FRANKLIN CO. OHIO
06 APR 14 PM 3:34
CLERK OF COURTS

NOTICE OF APPEAL TO THE COURT OF APPEALS FOR FRANKLIN COUNTY, THE TENTH APPELLATE DISTRICT FROM THE MARCH 17, 2006 DECISION OF THE FRANKLIN COUNTY COURT OF COMMON PLEAS DENYING DR. GHASSAN HAJ-HAMED, M.D'S APPEAL OF THE ORDER OF THE STATE MEDICAL BOARD OF OHIO

Notice is hereby given that Appellant, Ghassan Haj-Hamed, M.D., by and through his attorneys, hereby gives Notice of Appeal to the Court of Appeals for Franklin County from the March 17, 2006 Decision of the Common Pleas Court of Franklin County, Ohio denying Dr. Haj-Hamed's Appeal of the Order of the State Medical Board of Ohio (Case No. 05-CV F 02-01565).

Respectfully submitted,

GRAFF & ASSOCIATES, L.P.A.

HEALTH & HUMAN
APR 18 2006
SERVICES SECTION

Douglas E. Graff (0013222)
604 East Rich Street
Columbus, Ohio 43215
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Attorney for Appellant

FILED
COURT OF APPEALS
FRANKLIN CO. OHIO
06 APR 14 PM 3:17
CLERK OF COURTS

06APE--4- 351

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing NOTICE OF APPEAL was sent by to Kyle Wilcox attorney for the State Medical Board of Ohio, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215, by regular U.S. mail, this 14 day of April 2006.

Douglas E. Graff

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

GHASSAN HAJ-HAMED, M.D.	:	
	:	
Appellant,	:	
	:	**Case No. 05-CVF-02-01565**
	:	
v.	:	**JUDGE REECE**
	:	
STATE MEDICAL BOARD OF OHIO	:	
	:	
Appellee.	:	

JUDGMENT ENTRY AFFIRMING THE STATE MEDICAL BOARD'S JANUARY 12, 2005, ORDER PERMANENTLY REVOKING DR. HAJ-HAMED'S MEDICAL LICENSE

This case is before the Court upon the appeal, pursuant to R.C. 119.12, of the January 12, 2005, Order of the State Medical Board of Ohio which permanently revoked the Medical License of Ghassan Haj-Hamed. For the reasons stated in the decision of this Court rendered and filed on March 17, 2006, which decision is incorporated by reference as if fully rewritten herein, it is hereby:

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COMMON PLEAS COURT
FRANKLIN CO. OHIO
2006 APR 28 AM 8:25
CLERK OF COURTS

ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of Appellee, State Medical Board of Ohio, and the January 12, 2005, Order of the State Medical Board in the matter of Ghassan Haj-Hamed, M.D., is hereby AFFIRMED. Costs to Appellant.

IT IS SO ORDERED.

_____ _____
Date **JUDGE REECE**

APPROVED:

JIM PETRO (0022096)
Attorney General

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614 466-8600
614-466-6090 Facsimile

Counsel for the State Medical Board

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

HEALTH & HUMAN SERVICES SECTION
MAR 22 2006
FILED
2006 MAR 17 AM 10: 45
CLERK OF COURTS

GHASSAN HAJ-HAMED, M.D.,

Appellant,

-vs-

STATE MEDICAL BOARD OF OHIO,

Appellee.

Case No. 05CV001565

JUDGE REECE

DECISION ON MERITS OF ADMINISTRATIVE APPEAL

Rendered this 17th day of March, 2006

REECE, J.

This matter comes on for consideration on the appeal of Appellant, Ghassan Haj-Hamed, M.D., filed May 10, 2005 under the provisions of Sec. 119.12 of the Ohio Revised Code from the January 12, 2005 order of the State Medical Board of Ohio.

Appellant argues that the said order is not supported by reliable, probative and substantial evidence and is not in accordance with law. Appellant further raises constitutional issues of due process, equal protection and fundamental fairness.

In April of 2004 the Ohio State Medical Board issued its order summarily suspending Appellant, Dr. Ghassan Haj-Hamed's license to practice medicine on the grounds that he had violated the terms of his Consent Agreement of November 14, 2003 on three separate grounds: 1) that Appellant failed to subject himself to appropriate monitoring and supervision. 2) that Appellant wrote a prescription for a controlled

substance and 3) that Appellant failed to make his records immediately available, all in violation of the terms of the Consent Agreement.

The April 2004 Order and Notice of Opportunity for Hearing stated that under the Consent Agreement terms a violation thereof, in and of itself, constituted clear and convincing evidence that Appellant's continued practice of medicine would constitute a danger of immediate and serious harm to the public, for purposes of summary suspension under Ohio Revised Code Section 4731.22(G).

Appellant was further advised by said Order and Notice that his violation of the Consent Agreement was a violation of R.C. 4731.22(B)(15), a violation of a practice restriction that had been imposed on his license by Board action. He was also advised of his right to a hearing under Chapter 119 of the Ohio Revised Code. A hearing was duly scheduled and held before a Board hearing examiner in July and August of 2004.

The Hearing Examiner's report, filed September 16, 2004, found that Appellant had violated the Consent Agreement on all three of the above alleged grounds and recommended that the doctor's license be permanently revoked.

The Board, in an abundance of caution, remanded the suspension on the question of whether the Board complied with the requirements of Sec. 4731.22(G) in issuing the summary suspension. On review the Hearing Examiner concluded that the summary suspension (State's Exhibit 17) was proper even though the memorandum referred to the violation as being under Sec. 4731.22(B)(16) rather than Sec. 4731.22(B)(15). This was found to be essentially a typographical error only in that the evidence at the hearing clearly referred to the latter section and there was no testimony or finding with reference to matters covered by the former section, Sec. 4731.22(B)(16).

On January 12, 2005 the Board issued its final order to the effect that the Secretary and the Supervising Member, upon reviewing the evidence in support of the summary suspension, had had clear and convincing evidence that Appellant was in violation of the terms of the Consent Agreement and that his continued practice constituted an immediate threat of harm to the public.

The permanent revocation of Appellant's license became effective on February 10, 2005.

STANDARD OF REVIEW

In an administrative appeal of this matter under R.C. 119.12 the trial court must review the agency's order to determine whether it is supported by reliable, probative and substantial evidence and is in accordance with the law.

As stated in the leading case on the topic, U*niversity of Cincinnati v. Conrad* (1980) 63 Ohio St. 2d 108: "... the Court of Common Pleas must give due deference to the administrative resolution of evidentiary conflicts." The findings of an agency are not conclusive and when a review of the evidence indicates there are legally sufficient reasons to discredit evidence relied upon by the administrative body, the court may overturn the administrative decision. However, the fact-finder, having had the opportunity to observe the demeanor of the witnesses and weigh their credibility, deserves due deference where the evidence is merely conflicting and of approximately equal weight.

The above rule of interpretation has been affirmed in numerous cases even though the review in these cases is de novo. The deference of the reviewing court is required

given the expertise in interpretation of the technical and ethical requirements of a professional provided by its administrative body. *Joudah v. Ohio Department of Human Services* (1994) 94 Ohio App. 3d 614.

DECISION

The Appellant, Dr. Haj-Hamed, in this appeal raises five issues succinctly outlined in his reply brief along with the constitutional questions of due process, etc. raised at length in his original brief.

Appellant correctly states that the Secretary and Supervising Officer found clear and convincing evidence to suspend Appellant's license based on a violation of R.C.4731.22(B)(16). That section deals with non-payment of fees, a matter wholly unconnected with this case.

This matter was tried almost exclusively on questions relating to several violations of a Consent Decree, issues falling under the prior provision of the Code, R.C.4731.22(B)(15). The question was taken up on remand by the Hearing Examiner and found to be merely a typographical error, one that had no bearing on the conduct or course of the hearing.

Appellant argues by analogy that if this were a criminal case coming under Criminal Rule 7(D), a court could not allow a corrective amendment if such would change the name or identity of the crime. Appellant is correct in so far as this argument goes, but this is not strictly a criminal matter and the Ohio Rules of Criminal Procedure do not apply in administrative cases. Appellant cites no case authority in support of this

position. The typo did not change the nature of the proceedings in any way nor the outcome of this case and this argument is thus found to be without merit.

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Appellant raises a procedural issue concerning the calling by the Board of an unlisted expert witness at the trial of this case. It is quite clear that the pharmacist who filled the prescription complained of in the specified violations of the Consent Agreement was in part in error in her work. She signed his name to the Appellant's form and added a DEA number and gave her customer the prescription.

Of course, the avoidance of surprise is a worthy goal in the trial of any lawsuit. However, the calling of the expert in this case relative to the conduct of a pharmacist is not strictly the issue we are concerned with. Mistakes may have been made on her part, but this does not excuse Appellant from his own medical standard of care nor from his injunction under the Consent Agreement from writing prescriptions.

Based upon the evidence before the Hearing Examiner there was an abundance of evidence that Dr. Haj-Hamed started the process in motion with his phone call to the pharmacist and the writing on his prescription pad. His attempts to explain these matters were, and could well have been, found to be unreliable.

Appellant contends that the Hearing Examiner was in error in determining that Appellant was not properly supervised and monitored in his practice of medicine while at his practice at Tri-State Urgent Care. In comparing the briefs of the parties in this case it is readily apparent that Dr. Haj-Hamed took a very liberal interpretation and sought no clarification as to the meaning and intent of this provision.

It is admitted that Appellant was on the premises engaged in his practice on numerous occasions when his monitor, Dr. Sultan, was not. Appellant simply ignored

this provision. That Dr. Sultan would periodically review Appellant's office and patient records is certainly not sufficient to satisfy the requirements of the Consent Agreement.

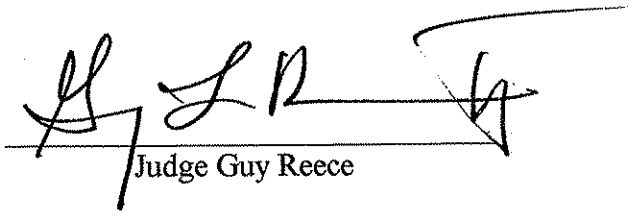
The third issue under the Consent Agreement is whether Appellant made his patient records available as called for. Again there is a wide divergence as to the parties' interpretations of the facts. For Dr. Haj-Hamed to state on one occasion that he owned the medical office in Ohio and then turn around state that he could not obtain the medical records being sought by the Board because of lack of ownership is sufficient for the Hearing Examiner to conclude that there was a violation here as well.

Appellant correctly states that the litigation in this matter has carried on at some length. There have been typographical errors and remands, witnesses called out of order, but having only tangential relevance to this case, appeals sought where there is no authority for granting an appeal under the statutes pertaining to the Board and appeals under Chapter 119.

The Board properly agreed to suspend the Appellant's medical license without prior hearing based on the finding by clear and convincing evidence that there was a violation of Sec. 4731.22(B) and that there was a danger of harm to the public. The interests in a doctor's licensure and the public safety were fairly weighed and the trier of fact acted well within its authority in finding as it did. Also Counsel for the Board points out, numerous instances of delays were brought about by Appellant for which it should not be held to answer.

In conclusion, after considering the evidence and the arguments presented, The Court must find that the order is spuuported by reliable, probative and substantial evidence and is in accordance with law. Therefore, the Order of the State Medical Board

of Ohio must be affirmed. Counsel for the Board should prepare and submit a judgment entry pursuant to Local Rule 25.01.



Judge Guy Reece

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Attorney for Appellant

Kyle C. Wilcox, Esq.
Assistant Attorney General
Health and Human Services Section
30 East Broad Street, 26th Floor
Columbus, Ohio
Attorney for Appellee

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
GENERAL DIVISION

STATE MEDICAL BOARD OF OHIO
2005 MAY 31 A 9:09
FILED COMMON PLEAS COURT
2005 MAY 25 AM 8:04
CLERK OF COURTS

GHASSAN HAJ-HAMED, M.D.,	]	CASE NO. 05CVF02-1565
Appellant,	]	JUDGE REECE
vs.	]	
STATE MEDICAL BOARD OF OHIO,	]	
Appellee.	]	

DECISION AND ENTRY DENYING APPELLANT'S MARCH 17, 2005 "MOTION FOR STAY OF THE ORDER AND ENTRY FROM THE STATE MEDICAL BOARD OF OHIO DATED JANUARY 12, 2005"

Issued this 23d day of May 2005.

REECE, J.

This case is a Revised Code 119.12 administrative appeal, by Ghassan Haj-Hamed, M.D., from an Order that the State Medical Board of Ohio journalized on January 12, 2005 and mailed to Appellant on February 4, 2005, permanently revoking Appellant's certificate to practice medicine and surgery in Ohio.

On March 17, 2005, Appellant moved this Court to suspend the Board's Order pending this Court's determination of the merits of this appeal. On March 31, 2005, the Board opposed Appellant's motion. Appellant has not filed a reply memorandum in support of the motion, and neither party has requested an oral hearing on the motion. Pursuant to Local Rule 21.01, the motion is deemed submitted for a decision.

Revised Code 119.12, which governs this appeal and Appellant's motion, provides:

> The filing of a notice of appeal shall not automatically operate as a suspension of the order of an agency. *** In the case of an appeal from the state medical board ***, the court may grant a suspension and fix its terms if it appears to the court that an unusual hardship to the appellant will result from the execution of the agency's order pending determination of the appeal ***and*** the health, safety, and welfare of the public will not be threatened by suspension of the order. *** (Emphasis added.)

Pursuant to R.C. 119.12, it is Appellant's burden to demonstrate not only that an unusual hardship to Appellant will result from the execution of the Board's Order while this appeal is pending, but also that the health, safety, and welfare of the public will not be threatened if this Court suspends the Board's Order.

Appellant has supported his motion with an affidavit in which he has testified that he will suffer an unusual hardship if this Court does not suspend the Board's Order while this appeal is pending. However, nowhere in Appellant's motion or in his affidavit has he even addressed the issue of whether the health, safety, and welfare of the public will be threatened if this Court suspends the Board's Order. For that reason, Appellant's motion is not well taken and it is therefore **DENIED**.

JUDGE GUY L. REECE II

Copies mailed to:

DOUGLAS E. GRAFF, ESQ. (0013222), Counsel for Appellant
KYLE C. WILCOX, AAG (0063219), Counsel for Appellee

2005 MAY 31 A 9:09
OF OHIO

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2005 FEB 10 PM 12: 34
CLERK OF COURTS-CV

GHASSAN HAJ-HAMED, M.D.
4056 Clifton Ridge
Cincinnati, Ohio 45220

Appellant,

vs.

STATE MEDICAL BOARD OF OHIO
77 South High Street, 17th Floor
Columbus, Ohio 43215-6127,

Appellee.

Case No. 05 CVP-2 01565

Judge

STATE MEDICAL BOARD
OF OHIO
2005 FEB -8 P 4: 04

NOTICE OF APPEAL OF THE ORDER AND ENTRY FROM THE STATE MEDICAL BOARD OF OHIO DATED JANUARY 12, 2005

Appellant, Ghassan Haj-Hamed, M.D., by and through his attorney, hereby gives Notice of Appeal to the Common Pleas Court of Franklin County, Ohio from the Order and Entry of the State Medical Board of Ohio, dated January 12, 2005, attached hereto as Exhibit A. The Order and Entry of the State Medical Board was mailed to Appellant on the 4th day of February 2005, by certified U.S. Mail.

Appellant contends that the Entry and Order appealed from is not a properly adopted and served Action or Adjudication of the State Medical Board, and that the Order is not supported by reliable, probative, and substantial evidence and is not otherwise in accordance with the law.

OHIO STATE MEDICAL BOARD
FEB 18 2005

Further, and without limiting the generality of the foregoing, Appellant contends that the Order and Entry and the related investigation conducted by the Board violated the protection afforded to the Appellant pursuant to the Constitution of the State of Ohio and the Constitution of the United States including, without limitation, the due process protections thereof.

Respectfully submitted,

GRAFF & ASSOCIATES, L.P.A.

Douglas E. Graff (0013222)
604 East Rich Street
Columbus, Ohio 43215-5341
(614) 228-5800
(614) 228-8811 Fax
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Notice of Appeal was delivered to the State Medical Board of Ohio, 77 South High Street, 17th Floor, Columbus, Ohio 43215-6127, by regular U.S. mail, this 8 day of FEB, 2005.

Douglas E. Graff

OHIO STATE MEDICAL BOARD
FEB 18 2005

State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.med.ohio.gov

January 12, 2005

Ghassan Haj-Hamed, M.D.
4056 Clifton Ridge Road
Cincinnati, OH 45220

Dear Doctor Haj-Hamed:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation, and Report of Remand of Siobhan R. Clovis, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on January 12, 2005, including motions modifying the Findings of Fact, and approving and confirming the Hearing Examiner's Conclusions of Law and Order, and adopting the Findings of Fact, Conclusions of Law and Order, as amended.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal must be taken to the Franklin County Court of Common Pleas.

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board of Ohio and the Franklin County Court of Common Pleas. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage, M.D.

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 7000 0600 0024 5149 9276
RETURN RECEIPT REQUESTED

Cc: Douglas E. Graff, Esq.
CERTIFIED MAIL NO. 7000 0600 0024 5149 9245
RETURN RECEIPT REQUESTED

MAILED 2-4-05

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation, and Report of Remand of Siobhan R. Clovis, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on January 12, 2005, including motions modifying the Findings of Fact, approving and confirming the Hearing Examiner's Conclusions of Law and Order, and adopting the Findings of Fact, Conclusions of Law and Order, as amended; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Ghassan Haj-Hamed, M.D., as it appears in the Journal of the State Medical Board of Ohio.

This certification is made by authority of the State Medical Board of Ohio and in its behalf.

Lance A. Talmage, M.D.

Lance A. Talmage, M.D.
Secretary

(SEAL)

January 12, 2005
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *

*

GHASSAN HAJ-HAMED, M.D. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on January 12, 2005.

Upon the Report and Recommendation, and Report of Remand of Siobhan R. Clovis, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation, and Report of Remand are attached hereto and incorporated herein, and upon the modification, approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

> The certificate of Ghassan Haj-Hamed, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

This Order shall become effective immediately upon mailing of notification of approval by the Board.

Lance A. Talmage, MD

Lance A. Talmage, M.D.
Secretary

(SEAL)

January 12, 2005
Date

STATE MEDICAL BOARD
OF OHIO

2004 DEC 16 A 9:26

REPORT OF REMAND
IN THE MATTER OF GHASSAN HAJ-HAMED, M.D.

The Matter of Ghassan Haj-Hamed, M.D., was remanded to Siobhan R. Clovis, Esq., Hearing Examiner for the State Medical Board of Ohio, by Order of the Board issued on October 13, 2004.

BASIS FOR REMAND

On April 29, 2004, the Board summarily suspended the medical license of Ghassan Haj-Hamed, M.D., pursuant to Section 4731.22(G), Ohio Revised Code. Also on that date, the Board issued a letter to Dr. Haj-Hamed, informing him of the summary suspension and of the Board's proposal to discipline his license on the basis of allegations that Dr. Haj-Hamed had violated his November 14, 2003, Consent Agreement with the Board. Dr. Haj-Hamed requested a hearing on the allegations against him.

Before the hearing, the parties briefed several issues, including whether the Board was required to afford the Respondent an adjudicatory hearing on the propriety of the April 29, 2004, summary suspension order. The State argued that an adjudicatory hearing on the summary suspension order should be held in conjunction with the hearing to be held on the Respondent's alleged violations of the Medical Practices Act. The Respondent argued that the appropriate vehicle for review of the summary suspension order was an appeal to the Court of Common Pleas of Franklin County.

On July 26, 2004, the Hearing Examiner issued an Entry dealing with several pre-hearing matters. In the Entry, the Hearing Examiner concurred with the Respondent that the review of a summary suspension order was not within the purview of the Hearing Examiner. Therefore, the Hearing Examiner decided that she would not rule upon the propriety of the summary suspension order, but that, at hearing, the State would be allowed to proffer the evidence that it would have presented to support the summary suspension order.

A hearing was held on July 29, July 30, and August 13, 2004. A Report and Recommendation was filed on September 16, 2004. The Board was scheduled to consider the issue during its October 13, 2004, meeting. However, at the meeting, the Board did not decide Dr. Haj-Hamed's case. Instead, the Board decided to modify the Report and Recommendation to substitute the Hearing Examiner's determination that she could not review the summary suspension order with a determination "that the Board, through its Hearing Examiner, may review the propriety of a summary suspension issued by the Board."

The Board further decided to reopen Dr. Haj-Hamed's hearing and to remand the case to the Hearing Examiner "for the narrow purpose of taking additional evidence on the question of whether or not the Board complied with the requirements of Division (G) of Section 4731.22 of the Revised Code in issuing the summary suspension in this matter, to wit:"

- Whether the Secretary and Supervising Member determined that there is clear and convincing evidence that Dr. Haj-Hamed violated Division (B) of Section 4731.22 of the Revised Code;

- Whether the Secretary and Supervising Member determined that Dr. Haj-Hamed's continued practice presents a danger of immediate and serious harm to the public;

- Whether the Secretary and Supervising Member recommended that the Board suspend Dr. Haj-Hamed's certificate without a prior hearing; and

- Whether the Board complied with the other procedural requirements of the Revised Code in issuing the summary suspension.

(Respondent's Exhibit R).

PROCEEDINGS UPON REMAND

I. Additional Day of Hearing: An additional day of hearing was held on November 9, 2004.

II. Appearances

A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Gregory A. Perry, Assistant Attorney General.

B. On behalf of the Respondent: Douglas E. Graff, Esq.

III. Testimony Heard

William J. Schmidt, Esq.

IV. Remand Exhibits

A. Presented by the State

1. State's Exhibit 16: Certified copies of two April 29, 2004, affidavits of William J. Schmidt, Esq.

2. State's Exhibit 17: Copy of an April 29, 2004, "Memorandum" concerning Ghassan Haj-Hamed, M.D., signed by the Secretary and Supervising Member of the Board.

B. Presented by the Respondent

1. Respondent's Exhibit Q: Excerpt from the draft minutes of the October 13, 2004, Board meeting.

2. Respondent's Exhibit R: Excerpt from the final minutes of the October 13, 2004, Board meeting.

3. Respondent's Exhibit S: Section 4731.22, Ohio Revised Code.

4. Respondent's Exhibit T: Script for an April 29, 2004, teleconference of the Board.

5. Respondent's Exhibit U: Information about the status of Dr. Haj-Hamed's Ohio medical license, obtained from the Board's website.

C. Board Exhibits:

1. Board Exhibit W: Copy of the September 16, 2004, Report and Recommendation in the Matter of Ghassan Haj-Hamed, M.D.

2. Board Exhibit V: State's Closing Arguments

3. Board Exhibit U: Respondent's Closing Arguments (Note: An attachment to this document has been removed and admitted to the record as Respondent's Exhibit U.)

PROCEDURAL AND LEGAL MATTERS

1. At the close of the hearing, the parties agreed to submit written closing arguments. Pursuant to a schedule agreed upon by the parties, the final written argument was filed on December 3, 2004. The hearing record closed at that time. (Remand Transcript at 126-130).

2. At hearing, an issue arose about whether the Respondent had failed to timely pay his Ohio medical license renewal fees. Counsel for the Respondent maintained that, at the time of the Respondent's summary suspension on April 29, 2004, he had allowed his license to lapse, and had failed to pay his renewal fees. (Remand Transcript at 95-97, 119, 126).

However, after the hearing, the Respondent submitted, as an attachment to his written closing arguments, documentation that his licensure fees had been paid through October 1, 2004. The Respondent did not move to admit this additional evidence into the record. However, as it was included in the Respondent's closing arguments, because there is no prejudice to the State, and because the evidence corrects misstatements by the Respondent's counsel, the Hearing Examiner admitted the document to the record as Respondent's Exhibit U.

3. In his closing arguments, the Respondent raised, for the first time, the argument that he had been denied due process of law because of the length of time between his summary suspension and the completion of the hearing in his case. Since the State filed its closing arguments first, the State has not had the opportunity to respond to this argument. The Respondent makes no explanation for failing to raise this objection at the November 9, 2004, hearing.

   Dr. Haj-Hamed is not entitled to relief under the Due Process Clause. Dr. Haj-Hamed has not demonstrated that the interim between his summary suspension and the completion of his hearing was so inordinately lengthy that it constituted a violation of due process, especially considering the overriding interest of public safety and the fact that his license had already been significantly restricted under his 2003 Consent Agreement. See *Federal Deposit Insurance Corp. v. Mallen* (1988), 486 U.S. 230, 240-247. Further, a portion of the delay is attributable to a continuance that the Respondent requested. (Board Exhibit X, p. 39-53, 56, 72-73).

SUMMARY OF THE EVIDENCE

All exhibits and transcripts of testimony, even if not specifically mentioned, were thoroughly reviewed and considered by the Hearing Examiner before preparing this Report and Recommendation.

1. The September 16, 2004, Report and Recommendation in the Matter of Ghassan Haj-Hamed, M.D., and the associated hearing record are hereby incorporated by reference.

2. On April 29, 2004, the Board summarily suspended Dr. Haj-Hamed's medical license pursuant to Section 4731.22(G), Ohio Revised Code, and Dr. Haj-Hamed's November 14, 2003, Consent Agreement. (State's Exhibit [St. Ex.] 10 at 3).

   Dr. Haj-Hamed's November 14, 2003, Consent Agreement includes the following provision:

   > If the Secretary and Supervising Member of the Ohio Board determine that there is clear and convincing evidence that Dr. Haj-Hamed has

> violated any term, condition, or limitation of this Consent Agreement, Dr. Haj-Hamed agrees that the violation, as alleged, also constitutes clear and convincing evidence that his continued practice presents a danger of immediate and serious harm to the public for purposes of initiating a summary suspension pursuant to R.C. 4731.22(G).

(St. Ex. 10 at 14).

Section 4731.22(G), Ohio Revised Code, which governs the Board's issuance of summary suspensions, states, in pertinent part:

> If the secretary and supervising member determine that there is clear and convincing evidence that an individual has violated division (B) of this section and that the individual's continued practice presents a danger of immediate and serious harm to the public, they may recommend that the board suspend the individual's certificate to practice without a prior hearing. Written allegations shall be prepared for consideration by the board.
>
> The board, upon review of those allegations and by an affirmative vote of not fewer than six of its members, excluding the secretary and supervising member, may suspend a certificate without a prior hearing. A telephone conference call may be utilized for reviewing the allegations and taking the vote on the summary suspension.
>
> The board shall issue a written order of suspension by certified mail or in person in accordance with section 119.07 of the Revised Code.

(Respondent's Exhibit [Resp. Ex.] S).

3. William J. Schmidt, Esq., Assistant Executive Director for the Board, testified on behalf of the State. During previous proceedings in this case, Mr. Schmidt advised that he oversees the compliance and investigatory functions of the Board. He further advised that he had been involved in Dr. Haj-Hamed's case since Dr. Haj-Hamed entered into his Consent Agreement, and that he had been involved with the investigation into Dr. Haj-Hamed's alleged violations of the Consent Agreement. (Board Exhibit [Bd. Ex.] W at 25-26; Remand Transcript [R. Tr.] at 59).

   Mr. Schmidt testified that, on April 27, 2004, he, along with other Board staff members and Assistant Attorney General Rebecca J. Albers, had met with Raymond J. Albert, Supervising Member of the Board, and Lance A. Talmage, M.D., Secretary of the Board, to discuss Dr. Haj-Hamed. (R. Tr. at 34, 61-62). Mr. Schmidt further testified that, at the

meeting, the following evidence had been provided to the Secretary and Supervising Member for their review:

- a recording of an April 26, 2004, interview with Tariq Sultan, M.D., Dr. Haj-Hamed's supervising physician, in which Dr. Sultan advised that he had not been supervising Dr. Haj-Hamed on-site, as required by Dr. Haj-Hamed's Consent Agreement;

- Dr. Haj-Hamed's November 13, 2003, Consent Agreement; and

- a recording of an April 27, 2004, investigative conference with Dr. Haj-Hamed. Mr. Schmidt advised that both Mr. Albert and Dr. Talmage had been at that conference, and that, as he recalled, they had not listened to the recording again on April 27.

(R. Tr. at 34-37, 47-49, 65-66; Hearing Transcript at 129-130, 146-148; St. Ex. 10 at 12).

Mr. Schmidt further testified that, on April 27 or April 28, 2004, the Secretary and Supervising Member had been emailed copies of prescriptions purportedly written by Dr. Haj-Hamed.[1] Mr. Schmidt also stated that, on April 29, 2004, he had prepared an affidavit for the Secretary and Supervising Member, alleging that Dr. Haj-Hamed, through his counsel, had refused the Board access to his patient records. Mr. Schmidt advised that he had previously informed the Secretary and Supervising Member of this information during the April 27, 2004, meeting. (R. Tr. at 34-36, 38-39, 63-64, 100-101; St. Ex. 16).

As set forth in the Report and Recommendation, this evidence supported allegations that Dr. Haj-Hamed had violated his Consent Agreement. (Bd. Ex. W).

Mr. Schmidt testified that, during the April 27, 2004, meeting, the Secretary and Supervising Member had not discussed any specific patient harm, or potential harm to patients, but that they had discussed the following provision of Dr. Haj-Hamed's Consent Agreement:

> If the Secretary and Supervising Member of the Ohio Board determine that there is clear and convincing evidence that Dr. Haj-Hamed has violated any term, condition, or limitation of this Consent Agreement, Dr. Haj-Hamed agrees that the violation, as alleged, also constitutes clear and convincing evidence that his continued practice presents a danger of

[1] Although Mr. Schmidt referred to these prescriptions as having been issued by Dr. Sultan, the context of his answer demonstrates that he meant Dr. Haj-Hamed. Further, Mr. Schmidt testified that the prescriptions also appeared in State's Exhibit 9, which is a collection of prescriptions written by Dr. Haj-Hamed, not Dr. Sultan. (R. Tr. at 35, 47-48; St. Ex. 9).

> immediate and serious harm to the public for purposes of initiating a summary suspension pursuant to R.C. 4731.22(G).

(R. Tr. at 70-71; St. Ex. 10 at 14).

4. Mr. Schmidt testified that, on April 27, 2004, the Secretary and Supervising Member had directed Board staff to proceed with a summary suspension and that, accordingly, Board staff had drafted a proposed notice of opportunity for hearing [Proposed Notice]. Mr. Schmidt explained that the Proposed Notice had constituted the statutorily required "written allegations" to be considered by the Board when deciding whether to summarily suspend Dr. Haj-Hamed's license. (R. Tr. at 41-46, 68-69, 78-80, 101).

   Mr. Schmidt testified that the Proposed Notice had been prepared by Board staff, with input from the Office of the Ohio Attorney General. He advised that the Secretary and Supervising Member had not participated in drafting the Proposed Notice, and that they had not approved the version which had been forwarded to the Board members for their consideration. However, he also advised that the Secretary and Supervising Member had instructed staff as to the allegations to be included in the Proposed Notice. (R. Tr. at 80-93, 101-102).

5. On April 29, 2004, the Secretary and Supervising Member signed a "Memorandum" which was addressed "To: File" and which stated,

> We as the Secretary and Supervising Member of the State Medical Board of Ohio (Board) have determined that there is clear and convincing evidence that Ghassan Haj-Hamed, M.D., has violated division **(B)(16) of Section 4731.22, Ohio Revised Code**, and that his continued practice presents a danger of immediate and serious harm to the public. We therefore recommend that the Board suspend his certificate without a prior hearing. Written allegations shall be prepared for consideration by Board members. (Emphasis added).

(St. Ex. 17).

Section 4731.22(B)(16), Ohio Revised Code, provides that a licensee may be disciplined by the Board for failing to pay license renewal fees. As of April 29, 2004, Dr. Haj-Hamed was not delinquent in paying license fees. Rather, his license did not expire until October 2004. Further, Mr. Schmidt testified that Dr. Haj-Hamed's license renewal fees had not been an issue during the April 27, 2004, meeting with the Secretary and Supervising Member. (R. Tr. at 100, 110; Resp. Exs. S, U).

The April 29, 2004, notice of opportunity for hearing [Notice] issued to Dr. Haj-Hamed, as well as the April 29, 2004, Entry of Order summarily suspending his license, refer to

violations of Section 4731.22(B)(15), Ohio Revised Code. Subsection (B)(15) provides that a licensee may be disciplined for "violation of the conditions of limitation placed by the board upon a certificate to practice." The factual allegations against Dr. Haj-Hamed, as stated in the Notice, concern violations of his consent agreement, rather than a failure to pay fees. (St. Ex. 10 at 3-8; Resp. Ex. S).

Mr. Schmidt testified that the reference to (B)(16) rather than (B)(15) in the April 29, 2004, "Memorandum" had been a typographical error. However, Mr. Schmidt testified that he did not know who had prepared the document. Mr. Schmidt further testified that the April 29, 2004, "Memorandum" was the only written document signed by both the Secretary and the Supervising Member with regard to the summary suspension of Dr. Haj-Hamed. (R. Tr. at 91, 97, 99-100, 105-107).

6. Mr. Schmidt testified that a teleconference among the Board members had been held on April 29, 2004, to discuss the proposed summary suspension of Dr. Haj-Hamed's medical license. He further testified that he had listened to the teleconference in the office of Anquenette Sloan, the President of the Board. (R. Tr. at 41-42, 46, 52-53; St. Ex. 10 at 10).

   Mr. Schmidt testified that, prior to the teleconference, the following had been provided to each Board member, including the Secretary and Supervising Member, for their review:

   - the Proposed Notice;
   - a patient key;
   - a copy of Dr. Haj-Hamed's Consent Agreement; and
   - a script for the teleconference.

   (R. Tr. at 41-46). Mr. Schmidt clarified that the Proposed Notice sent to the Board members had been the same as the April 29, 2004, Notice issued to Dr. Haj-Hamed, except that it had not included Dr. Talmage's signature. (R. Tr. at 44, 73-74; St. Ex. 10 at 4-9, 11-15).

   Mr. Schmidt testified that all of the Board members except David S. Buchan, D.P.M., had participated in the teleconference. As required by law, the Secretary and Supervising Member abstained from voting during the teleconference.[2] Anand G. Garg, M.D., also abstained, because he had previously participated in the case as Secretary of the Board. President Sloan did not vote. Seven members voted during the teleconference. These seven members voted unanimously to summarily suspend Dr. Haj-Hamed's license and to

[2] Section 4731.22(G), Ohio Revised Code.

issue the Proposed Notice to Dr. Haj-Hamed. (R. Tr. at 55-57; St. Ex. 10 at 10; Resp. Ex. T at 2).

Mr. Schmidt identified a script that had been followed during the teleconference. He advised that the teleconference had proceeded in accordance with the script. (R. Tr. at 51-59; Resp. Ex. T). The script provides as follows:

> Proceeding with the business at hand, the Secretary and Supervising Member of the State Medical Board have determined that, pursuant to the terms of the November 14, 2003, Consent Agreement between Dr. Haj-Hamed and the State Medical Board of Ohio, there is clear and convincing evidence that Dr. Haj-Hamed has violated Division (B)(15) of Section 4731.22, Ohio Revised Code, and that his continued practice presents a danger of immediate and serious harm to the public. They therefore recommend that the Board suspend his certificate without a prior hearing. Copies of a proposed "Notice of Summary Suspension and Opportunity for Hearing" describing the basis for this determination have been distributed to all Board members. Each Board member will now be given the opportunity to review the Proposed Notice.

(Resp. Ex. T at 2).

Mr. Schmidt testified that, although the script and Proposed Notice referred to (B)(15) violations, rather than a (B)(16) allegation as referenced in the April 29, 2004, "Memorandum," the Secretary and Supervising Member had not objected to the Board's decision to propose to discipline Dr. Haj-Hamed, and to summarily suspend his license, for violating his Consent Agreement, a violation of 4731.22(B)(15), rather than (B)(16). (R. Tr. at 112; St. Ex. 10 at 4-9; Resp. Ex. T).

7. After the teleconference, the Board issued an Entry of Order stating, in pertinent part:

> Pursuant to Section 4731.22(G), Ohio Revised Code, and upon recommendation of Lance A. Talmage, M.D., Secretary, and Raymond J. Albert, Supervising Member; and
>
> Pursuant to their determination that there is clear and convincing evidence that Ghassan Haj-Hamed, M.D., has violated 4731.22(B)(15), Ohio Revised Code, as alleged in the Notice of Summary Suspension and Opportunity for Hearing which is enclosed herewith and fully incorporated herein, which determination is based upon review of information received pursuant to an investigation; and

> Pursuant to their further determination that Dr. Haj-Hamed's continued practice presents a danger of immediate and serious harm to the public;
>
> The following Order is hereby entered on the Journal of the State Medical Board of Ohio for the 29th day of April 2004;
>
> > It is hereby ORDERED that the certificate of Ghassan Haj-Hamed, M.D., to practice medicine and surgery in the State of Ohio be summarily suspended.
> >
> > It is hereby ORDERED that Ghassan Haj-Hamed, M.D., shall immediately close all his medical offices and immediately refer all active patients to other appropriate physicians.
>
> This Order shall become effective immediately.

(St. Ex. 10 at 3).

8. On April 30, 2004, the Board issued to Dr. Haj-Hamed, by certified mail, the Order of Summary Suspension and Notice of Opportunity for Hearing. Mr. Schmidt testified that the documents had also been hand-delivered. (R. Tr. p. 59; St. Ex. 1A).

FINDINGS OF FACT

1. The Secretary and Supervising Member of the Board determined that there was clear and convincing evidence that Ghassan Haj-Hamed, M.D., had violated Section 4731.22(B), Ohio Revised Code.

2. The Secretary and Supervising Member determined that Dr. Haj-Hamed's continued practice presented a danger of immediate and serious harm to the public.

3. The Secretary and Supervising Member recommended that the Board suspend Dr. Haj-Hamed's certificate without a prior hearing.

4. The Board complied with the other procedural requirements of Section 4731.22(G), Ohio Revised Code.

CONCLUSIONS OF LAW

The Board's April 29, 2004, order summarily suspending the medical license of Ghassan Haj-Hamed, M.D., was issued properly and lawfully in accordance with Section 4731.22(G), Ohio Revised Code.

* * * * *

The Respondent argues that the summary suspension was improper in this case because State's Exhibit 17, an April 29, 2004, file memorandum signed by the Secretary and Supervising Member of the Board, referred to a violation of Section 4731.22(B)(16), rather than (B)(15), Ohio Revised Code. However, given the totality of the evidence, the only logical conclusion is that the reference to (B)(16) was a typographical error. Mr. Schmidt's testimony demonstrated that all discussions of the proposed summary suspension among the Board members and Board staff concerned (B)(15) violations. All of the other relevant documents reference (B)(15) violations, rather than (B)(16) violations. Further, Dr. Haj-Hamed had not violated Section 4731.22(B)(16), Ohio Revised Code; he was up-to-date in his license renewal fees.

The Respondent further argues that the file memorandum outweighs the remainder of the evidence because it is a "journalized entry" and the Board speaks only through its journal. But the document is a file memorandum, not a "journalized entry." The document was never issued as an entry or order in this case. The Respondent has provided no support for a finding that the file memorandum has the force and effect of a "journalized entry," or for a determination that it outweighs all of the other evidence demonstrating that the Board had properly considered the appropriate allegations against Dr. Haj-Hamed. It should also be noted that the Board's April 29, 2004, Entry and Order of Summary Suspension correctly references Section 4731.22(B)(15), Ohio Revised Code.

The Respondent emphasized that the file memorandum was the only written, signed documentation of the Secretary and Supervising Member which set forth their determinations under Section 4731.22(G). However, the statute does not require the Secretary and Supervising Member to issue a written document, and the evidence is otherwise clear that the Secretary and Supervising Member had considered, and based their determinations upon, evidence that Dr. Haj-Hamed had violated Section 4731.22(B)(15), Ohio Revised Code.

Accordingly, the Hearing Examiner finds that the Respondent's arguments are unpersuasive and that the State has sufficiently demonstrated that the Board properly followed and applied Section 4731.22(G), Ohio Revised Code, in this case.

The September 16, 2004, Report and Recommendation contains further Findings of Fact and Conclusions of Law, as well as a Proposed Order, for the Board's consideration.

Siobhan R. Clovis, Esq.
Hearing Examiner

STATE MEDICAL BOARD
OF OHIO

2004 SEP 16 A 11: 59

REPORT AND RECOMMENDATION
IN THE MATTER OF GHASSAN HAJ-HAMED, M.D.

The Matter of Ghassan Haj-Hamed, M.D., was heard by Siobhan R. Clovis, Esq., Hearing Examiner for the State Medical Board of Ohio, on July 29, July 30, and August 13, 2004.

INTRODUCTION

I. Basis for Hearing

A. In a Notice of Summary Suspension and Opportunity for Hearing, dated April 29, 2004, the State Medical Board of Ohio [Board] notified Ghassan Haj-Hamed, M.D., that, pursuant to Section 4731.22(G), Ohio Revised Code, the Board had adopted an Order of Summary Suspension of his certificate to practice medicine and surgery in Ohio.

Furthermore, the Board notified Dr. Haj-Hamed that the Board had proposed to take disciplinary action against his certificate based upon allegations that he had violated his November 14, 2003, Consent Agreement with the Board.

The Board alleged that Dr. Haj-Hamed's acts, conduct, and/or omissions, individually and/or collectively, constitute a "'[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,' as that clause is used in Section 4731.22(B)(15), Ohio Revised Code."

Accordingly, the Board advised Dr. Haj-Hamed of his right to request a hearing in this matter. (State's Exhibit 1A).

B. On May 27, 2004, Douglas E. Graff, Esq., submitted a written hearing request on behalf of Dr. Haj-Hamed. (State's Exhibit 1B).

II. Appearances

A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Gregory A. Perry and Kyle C. Wilcox, Assistant Attorneys General.

B. On behalf of the Respondent: Douglas E. Graff, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

A. Presented by the State

1. Stephanie Sheard, R.Ph.

2. Gregory McGlaun

3. Tariq Sultan, M.D.

4. Timothy J. Benedict, R.Ph.

5. William J. Schmidt, Esq.

6. Ghassan Haj-Hamed, M.D., as upon cross-examination

B. Presented by the Respondent

Dr. Haj-Hamed

II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1A through 1FF: Procedural exhibits. (Note: The copies of the patient key attached to State's Exhibits 1A, 1R, and 1S have been redacted to protect patient confidentiality. The patient key appears in the record as Board Exhibit Z).

* 2. State's Exhibit 2: Transcript of an audio recording of a February 9, 2004, Board probationary conference with Ghassan Haj-Hamed, M.D.

* 3. State's Exhibit 3A: February 10, 2004, Target telephone prescription for Lomotil written for Patient 1.

4. State's Exhibit 4: April 29, 2004, fax from the Drug Enforcement Administration [DEA] to the Board regarding Dr. Haj-Hamed's DEA registration and licensure. (Note: The Hearing Examiner redacted the DEA number pursuant to a request from the Respondent. See Hearing Transcript [Tr.] at 574).

* 5. State's Exhibit 5: Transcript of an audio recording of an April 27, 2004, Board investigatory conference with Dr. Haj-Hamed. (Note: A portion of the transcript was redacted because it revealed settlement negotiations. See Tr. at 513, 516-517, 559-564).

6. State's Exhibit 6: Copy of an April 27, 2004, letter to the Board from Tariq Sultan, M.D.

* 7. State's Exhibit 7A: Patient records from the West Chester office of Tri-State Urgent Care [Tri-State]. (Note: The Hearing Examiner numbed the pages.)

* 8. State's Exhibit 8A: Patient records from the Oakley/Hyde Park office of Tri-State. (Note: The Hearing Examiner numbered the pages.)

* 9. State's Exhibit 8B: Excel spreadsheet created by Board investigator Gregory McGlaun from a review of the patient records which comprise State's Exhibits 8A and 8C. (Note: With the agreement of the parties, the Hearing Examiner redacted entries reflecting the records which comprise State's Exhibit 8C. See Tr. at 567-573.)

* 10. State's Exhibit 8C: Patient records from the Oakley/Hyde Park office of Tri-State, which were identified by Dr. Haj-Hamed as not bearing his signature. (See Tr. at 368).

11. State's Exhibit 8D: Copy of an undated note from Jamie Flynn, Office Manager for Tri-State.

* 12. State's Exhibit 8E: February 10, 2004, patient record for Patient 1.

* 13. State's Exhibit 8F: April 20, 2004, patient record for Patient GH. (Note: This patient is not identified in the patient key. See Tr. at 490-491; State's Exhibit 11).

* 14. State's Exhibit 9: Subpoenaed pharmacy records with patient record information added.

* 15. State's Exhibit 9A: February 10, 2004, prescription for Phenergan and Lomotil written for Patient 1.

16. State's Exhibit 10: Certified copies of records maintained by the Board concerning Dr. Haj-Hamed.

17. State's Exhibit 11: Videotape of a May 23, 2004, WCPO-TV news story about Dr. Haj-Hamed.

18. State's Exhibit 12: Copy of a June 17, 2004, Agreed Order of Indefinite Restriction issued by the Commonwealth of Kentucky Board of Medical Licensure to Dr. Haj-Hamed.

* 19. State's Exhibit 13: March 24, 2004, report of a psychiatric evaluation of Dr. Haj-Hamed by William D. Weitzel, M.D.

20. State's Exhibit 14: Copy of a January 20, 2004, letter from the Board to Dr. Sultan.

* 21. State's Exhibit 15: Audio CD of the Board's February 9, 2004, and April 27, 2004, conferences with Dr. Haj-Hamed. (Note: State's Exhibits 2 and 5 are transcripts of these proceedings. Further note: A portion of the audio was redacted because it revealed settlement negotiations. See Tr. at 513, 516-517, 559-564).

B. Presented by the Respondent

1. Respondent's Exhibit A: Copy of an April 27, 2004, written statement of Stephanie Sheard, R.Ph., provided to a Board investigator.

2. Respondent's Exhibit B: Excerpts from the Health Insurance Portability and Accountability Act. (Note: The Hearing Examiner numbered the pages.)

3. Respondent's Exhibit C: Dr. Haj-Hamed's curriculum vitae. (Note: The Hearing Examiner numbered the pages.)

* 4. Respondent's Exhibit D: Copy of Dr. Haj-Hamed's 2003 W-2 from Tri-State.

* 5. Respondent's Exhibit E: Copy of an earnings statement for Dr. Haj-Hamed from Tri-State, for the pay period of July 4, 2004, through July 17, 2004.

6. Respondent's Exhibit F: Copy of the Articles of Organization of Tri-State Urgent Care, L.L.C.

7. Respondent's Exhibit G: Information obtained from the website of the Butler County Auditor's Office about property located at "7345 Kingsgate Way."

8. Respondent's Exhibit H: Information obtained from the website of the Hamilton County Auditor about property located at "5002 Ridge Ave."

* 9. Respondent's Exhibit I: Copy of an Education Plan for Dr. Haj-Hamed, issued by the Center for Personalized Education for Physicians [CPEP].

* 10. Respondent's Exhibit J: Copy of a November 6-7, 2003, Assessment Report for Dr. Haj-Hamed issued by CPEP.

11. Respondent's Exhibit K: Copy of a March 25, 2003, Order of the Commonwealth of Kentucky, Pendleton Circuit Court, exonerating the bail of Dr. Haj-Hamed.

12. Respondent's Exhibit N: July 28, 2004, Affidavit of Jamie Flynn.

13. Respondent's Exhibit O: July 28, 2004, Affidavit of Ashley Miller.

14. Respondent's Exhibit P: Copy of a June 11, 2003, Consent Agreement between the Board and Juan Carlos Mejia, M.D.

C. Admitted sua sponte by the Hearing Examiner post hearing

* 1. Board Exhibit Z: Patient key.

2. Board Exhibit Y: Copy of the 2001 Physicians' Desk Reference entry for Lomotil.

3. Board Exhibit X: Transcript of the June 8, 2004, prehearing conference.

Note: All exhibits marked with an asterisk [*] have been sealed, either to protect patient confidentiality or pursuant to an unopposed request by one or both of the parties.

PROFFERED MATERIALS

The following exhibit was not admitted to the hearing record nor considered by the Hearing Examiner, but is being sealed and held as proffered material:

Respondent's Exhibit M: Documents regarding two June 25, 2004, prescriptions written by Susheel Kakde, M.D.

PROCEDURAL MATTERS

1. Prior to the hearing, the parties briefed several issues, including whether the Board was required to afford the Respondent an adjudicatory hearing on the propriety of the April 29, 2004, summary suspension order. The State argued that an adjudicatory hearing on the summary suspension order should be held in conjunction with the hearing to be held on the Respondent's alleged violations of the Medical Practices Act. The Respondent argued that the appropriate vehicle for review of the summary suspension order was an appeal to the Court of Common Pleas of Franklin County.

   On July 26, 2004, the Hearing Examiner[1] issued an Entry dealing with several pre-hearing matters. In the Entry, the Hearing Examiner concurred with the Respondent that the review of a summary suspension order was not within the purview of the Hearing Examiner. Therefore, the Hearing Examiner decided that she would not rule upon the propriety of the summary suspension order, but that, at hearing, the State would be allowed to proffer the evidence that it would have presented to support the summary suspension order.

   Accordingly, at hearing, the State presented a narrative proffer of the evidence and arguments that the State would have presented, had there been an adjudicatory hearing on the summary suspension order. (State's Exhibits 1Q, 1R, 1S, 1CC; Hearing Transcript [Tr.] at 545-546, 736).

2. Prior to the hearing, the Hearing Examiner granted the State's July 22, 2004, motion to exclude extrinsic evidence about the meaning of the Consent Agreement. At hearing, because of this ruling, the State objected to certain testimony by Drs. Sultan and Haj-Hamed about their understanding of the meaning of Dr. Haj-Hamed's Consent Agreement. When the Hearing Examiner overruled the State's objections, and allowed such testimony, it was with the understanding that testimony about the doctors' understanding of the Consent Agreement could <u>not</u> be considered to explain the meaning of the Consent Agreement; rather, it could only be considered to explain the conduct of Drs. Sultan and Haj-Hamed. (State's Exhibits 1V and 1Z; Tr. at 137-139, 641-644).

3. The Respondent proffered Respondent's Exhibit M, documents regarding two June 25, 2004, prescriptions written by Susheel Kakde, M.D., for a patient at the West Chester office of Tri-State Urgent Care. The Respondent testified at hearing that the labels on the medication bottles issued pursuant to these prescriptions had erroneously indicated that he had written the prescriptions. Respondent's Exhibit M includes a copy of the patient record, indicating that Dr. Kakde had prescribed the medications, and a letter from Dr. Kakde affirming that she had prescribed the medications. (Tr. at 630-634).

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[1] At this point in the proceedings, the Hearing Examiner presiding over the case was Sharon W. Murphy, Esq. The other three procedural matters were ruled upon by Hearing Examiner Clovis.

The State objected to this exhibit because the Respondent had not provided a copy of the exhibit to the State until the third and final day of hearing, held two weeks after the first two days of hearing. Therefore, the State argued, there had been no opportunity for the State to investigate the authenticity of the evidence. (Tr. at 711-716).

The State further directed the Hearing Examiner to Rule 4731-13-18(A)(2), Ohio Administrative Code, which provides that, in a summary suspension case, if a party submits a written request to the opposing party for a list of witnesses and documents to be introduced at hearing, the list must be provided within a reasonable time, but not less then three days before the hearing. The State had timely submitted a written request for a list of the Respondent's documents and witnesses. (Tr. at 717; State's Exhibit 1E).

The State also noted that the evidence was hearsay, and argued that it was irrelevant. (Tr. at 711-712).

The State's objection to the admission of Respondent's Exhibit M was sustained for the reasons argued by the State. (Tr. at 717-718). Should the Board choose to do so, however, the Board may vote to overrule the decision of the Hearing Examiner, and admit Respondent's Exhibit M into evidence.

4. The hearing record in this matter was held open until August 20, 2004, to give the State an opportunity to submit additional evidence. The evidence was timely submitted and entered into the record as State's Exhibits 1A through 1FF and State's Exhibit 15. (See Hearing Transcript [Tr.] at 559, 561-562).

SUMMARY OF THE EVIDENCE

All exhibits and transcripts of testimony, even if not specifically mentioned, were thoroughly reviewed and considered by the Hearing Examiner before preparing this Report and Recommendation.

1. Ghassan Haj-Hamed, M.D., testified that he had attained his medical degree in 1990 from Damascus University Medical Center in Syria. He then completed two years of a three-year internal medicine residency at Damascus University. Dr. Haj-Hamed testified that his residency was interrupted when he immigrated to the United States, in late 1992. From 1993 through 1994 he participated in a transitional residency program at Hurley Medical Center in Flint, Michigan. He described the program as a "rotation of mixed specialties, including internal medicine, surgery, OB-GYN, and pediatrics." Dr. Haj-Hamed testified that, from 1994 through 1997, he had participated in a three-year internal medicine residency at Good Samaritan Hospital in Cincinnati, Ohio. He further stated that, after graduating from the program, he had continued as chief resident for an additional year. (Hearing Transcript [Tr.] at 322-323, 580-582).

Dr. Haj-Hamed's curriculum vitae indicates that he had worked at an Urgent Care "at DUCO" in Cincinnati from 1995 to 1997; as a house physician at Mercy Franciscan Hospital from 1996 to 2000; as an emergency room physician at Mercy Scioto County Hospital in 1996; as Director at Riverside Medical Center from 1998 to 2003; as Director of Urgent Care Centers from 1999 to 2003; as Medical Director at Garrard Nursing Home in Covington, Kentucky "till 2003"; and as Medical Director at "Baxter, Biotech, Plasmapheresis Center" in Newport, Kentucky, "[t]ill 2003." All of these positions are listed as having been "[p]art time." (Respondent's Exhibit [Resp. Ex.] C at 1).

Dr. Haj-Hamed testified that he had been board certified in internal medicine in August 1997. He further testified that he holds medical licenses in Kentucky and Ohio, and that he used to hold a license in Utah, but that it has lapsed due to nonrenewal. He stated that he had never practiced in Utah; he had obtained a license there to facilitate licensure in Ohio. He advised that he does not intend to reactivate his Utah license. (Tr. at 321, 582-584).

2. On February 7, 2003, the Commonwealth of Kentucky Board of Medical Licensure [Kentucky Board] issued a Complaint against Dr. Haj-Hamed and an Emergency Order of Suspension of his Kentucky medical license. The Complaint alleged that Dr. Haj-Hamed had been excessively and unlawfully prescribing controlled substances to patients. (State's Exhibit [St. Ex.] 10 at 31-50).

   The Complaint was resolved on June 17, 2004, with an Agreed Order of Indefinite Restriction. The Agreed Order indefinitely restricts Dr. Haj-Hamed's Kentucky medical license with several terms and conditions, including restrictions on his ability to prescribe controlled substances. (St. Ex. 12).

3. Dr. Haj-Hamed testified that a grand jury had refused to indict him for the alleged unlawful prescribing activities which were the basis of the Kentucky action. A May 23, 2004, local news broadcast aired on WCPO-TV in Cincinnati, Ohio, reported that a grand jury had twice refused to indict Dr. Haj-Hamed for 24 felony counts involving alleged unlawful prescribing. However, the report further indicated that a "federal investigation continues." (Tr. at 620-621; St. Ex. 11; Resp. Ex. K).

4. On November 14, 2003, the Board entered into a Consent Agreement with Dr. Haj-Hamed, on the basis of the Kentucky Board's suspension of his Kentucky medical license. In the Consent Agreement, Dr. Haj-Hamed agreed to abide by probationary terms, conditions, and limitations placed upon his Ohio medical license. Dr. Haj-Hamed was represented by counsel in his negotiation of the Consent Agreement. (Tr. at 307-308; St. Ex. 10 at 11-15).

   On April 29, 2004, Dr. Haj-Hamed's Ohio license was summarily suspended by the Board because of allegations that he had violated the Consent Agreement. (St. Ex. 10 at 3).

5. Dr. Haj-Hamed testified that he is currently practicing at a Tri-State Urgent Care [Tri-State] office in Cold Spring, Kentucky. (Tr. at 320-321).

Failure to Comply with the "On-Site" Requirement

6. Paragraph 3 of the "Agreed Conditions" in Dr. Haj-Hamed's Consent Agreement with the Board states, in pertinent part:

> Dr. Haj-Hamed agrees to limit his practice to his employment at Tri-State Urgent Care in Cincinnati, Ohio. He further agrees that his practice at Tri-State Urgent Care shall be supervised and monitored **on site at all times** by Tariq Sultan, M.D., who is board certified in internal medicine. Dr. Haj-Hamed further states that he is Dr. Sultan's employee and has no financial relationship with Dr. Sultan other than as an employee to his employer, Dr. Sultan.
>
> Dr. Sultan shall supervise and monitor Dr. Haj-Hamed and his medical practice, and shall review 100% of Dr. Haj-Hamed's patient charts.

(St. Ex. 10 at 12) (Emphasis added.)

7. Dr. Haj-Hamed testified that Tri-State operates three Urgent Care centers, which are located in West Chester, Ohio; Oakley/Hyde Park, Ohio; and Cold Spring, Kentucky. He stated that, after his Consent Agreement had gone into effect, he had worked at both Ohio facilities. He advised that he had not had a regular schedule at the West Chester office [West Chester]. He testified, "originally, I started doing Monday and Friday, and occasionally I was doing other days, like Wednesday." He stated that he had "tend[ed]" to work full shifts, from 9:00 a.m. to 10:00 p.m. Dr. Haj-Hamed advised that, during a full shift, he would see about 20 patients. (Tr. at 324-325, 333-334, 347).

   Dr. Haj-Hamed further testified that he had not worked specific days at the Oakley/Hyde Park office [Oakley]. He stated that his schedule had varied, but that he had usually worked full shifts, with half shifts as needed. He advised that he would sometimes work seven days a week at Oakley. (Tr. at 334-335).

8. On May 23, 2004, a Cincinnati local news program aired a report about Dr. Haj-Hamed which declared that he had been practicing without Dr. Sultan on site. The report showed Dr. Haj-Hamed treating a patient at Oakley while Dr. Sultan was allegedly not at the facility. (St. Ex. 11).

Dr. Haj-Hamed questioned the motives of those airing the report. He testified:

> Channel 9 is connected with Channel 19. Channel 19, Tricia Macke is one of the news reporters. Her husband is running a case against me. And he used Channel 19 a lot to lay a basis until he got a letter from my lawyer. So they couldn't use the free publicity anymore. This is when they talk to Channel 9 to do this.
>
> So there is a personal interest from the side of Channel 9 to do all this. It's her interest to make me look bad. It's her interest to say what she said on the tape. It's very unusual. I never heard of a news channel check on compliance of physician. It never happened in the U.S.

(Tr. at 687-688).

9. At hearing, Dr. Sultan admitted that he had not been on site with Dr. Haj-Hamed during all of the time that Dr. Haj-Hamed was seeing patients. In fact, Dr. Sultan's testimony indicates that he had not been on site with Dr. Haj-Hamed during the majority of the time that Dr. Haj-Hamed was practicing pursuant to his Consent Agreement. Dr. Sultan testified that he has his own private practice and that, contrary to the supervision provision in the Consent Agreement, he had not been Dr. Haj-Hamed's employer at Tri-State. Dr. Sultan advised that he has never been formally employed by Tri-State, and that he does not know who owns Tri-State. (Tr. at 95-98, 130).

   Dr. Sultan explained that, from October 2003 through June 2004, he had had an arrangement with Tri-State to see his own patients at West Chester on Mondays from 9:00 a.m. until 5:00 p.m. He further stated that, occasionally, he would see Urgent Care patients on Mondays from 5:00 p.m. until 10:00 p.m. He stated that, from October 2003 through February 2004, he would also see his patients at West Chester on "some Fridays, " but that he had stopped working Fridays at West Chester in February 2004. Dr. Sultan testified that apart from Mondays and some Fridays, he would not have been on site with Dr. Haj-Hamed while Dr. Haj-Hamed was seeing patients at West Chester. (Tr. at 100-102, 130-131).

   The State produced well over 500 patient records from West Chester indicating treatment by Dr. Haj-Hamed between the dates of February 6 and April 27, 2004. These records indicate that Dr. Haj-Hamed did not confine his practice to Mondays and the Fridays that Dr. Sultan had worked at West Chester. (St. Ex. 7A at 126-130, 132-137, 139, 160-171, 208-224, 238, 245-257, 273-313, 333-371, 373-398, 409-410, 423, 427-428, 431-437, 441-442, 476-480, 485, 494-500, 503-504, 519-524, 527-532, 540-547, 550-578).[2]

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[2] This list includes patient records generated on Fridays in March and April 2004, because Dr. Sultan testified that he had ceased working Fridays at West Chester in February 2004.

10. Dr. Sultan testified that he had gone to Oakley only twice to supervise Dr. Haj-Hamed on site, for a total of about four hours. Dr. Haj-Hamed, who testified that he had usually seen about two patients per hour, generated over 1500 patient records from his practice at Oakley during February, March, and April 2004. (Tr. at 105, 128-129, 131, 347, 399-400; St. Ex. 8A). Further, pharmacy records indicate that Dr. Haj-Hamed wrote prescriptions for Oakley patients between February 10, 2004, and April 15, 2004, as shown below:

Patient 1	Tuesday	2-10-04
Patient 1	Thursday	2-19-04
Patient 1	Thursday	4-22-04
Patient 2	Thursday	3-6-04
Patient 3	Thursday	3-18-04
Patient 4	Thursday	3-25-04
Patient 5	Tuesday	4-13-04
Patient 6	Thursday	4-15-04

(St. Ex. 9, 9A).

11. Dr. Sultan testified that, on April 26, 2004, he had met with Board staff members Douglas Edwards and William J. Schmidt, Esq., to discuss Dr. Haj-Hamed and his Consent Agreement. After the meeting, Dr. Sultan wrote a letter to the Board advising that he could no longer continue as Dr. Haj-Hamed's supervising and monitoring physician. (Tr. at 129-132). His April 27, 2004, letter states, in pertinent part:

> On Friday April 23, 2004, I was requested to meet with Douglas Edwards from the State Medical Board of Ohio. After discussing Dr. Haj-Hamed with him, I was informed that my supervisory capacity involved being actually physically present while Dr. Haj-Hamed was seeing patients. I had been under the assumption that reviewing the charts and periodically discussing patients with Dr. Haj-Hamed would suffice as supervision. If I had any indication that being physically present at all times was mandatory, I would never have committed to act as supervisor for Dr. Haj-Hamed. It would be impossible for me to conduct my own practice and supervise Dr. Haj-Hamed concurrently.

(St. Ex. 6).

Dr. Sultan explained that he had never been provided a copy of Dr. Haj-Hamed's Consent Agreement, by Dr. Haj-Hamed or the Board, until he had received a copy from

Mr. Schmidt on April 26, 2004. When shown a copy of a January 20, 2004, letter that the Board had sent to him about the Consent Agreement, Dr. Sultan testified that he had never received it. He advised that the address to which the letter had been sent was incorrect. (Tr. at 161-163, 168-169; St. Ex. 14).

Dr. Sultan testified that he had reviewed 100% of Dr. Haj-Hamed's charts, as required by the Consent Agreement, and that he had seen no evidence of inadequate patient care. Dr. Sultan further testified that he had been readily available by pager or cell phone to Dr. Haj-Hamed at most times. Dr. Sultan described Dr. Haj-Hamed as a good doctor. (Tr. at 109, 112-113, 140-142; St. Ex. 10 at 12).

12. Dr. Haj-Hamed stated that he had not shown Dr. Sultan the Consent Agreement because he had not been required to do so, and suggested that it had been the Board's responsibility to provide Dr. Sultan with a copy. However, it should be noted that the Consent Agreement requires Dr. Haj-Hamed to provide a copy of the Consent Agreement to Tri-State, and that the Consent Agreement states that Dr. Sultan was Dr. Haj-Hamed's employer at Tri-State. (Tr. at 451; St. Ex 10 at 12-13).

    When asked about the provision in the Consent Agreement which indicates that Dr. Sultan was his employer at Tri-State, Dr. Haj-Hamed stated, "I think that was a mistake. * * * I don't know how that got there." He claimed, "I signed [the Consent Agreement], but I didn't pay attention to that section. I saw that later." (Tr. at 463-464).

13. Dr. Haj-Hamed testified that both he and another physician, Juan Carlos Mejia, M.D., had been named in the February 7, 2004, Kentucky Board Complaint. Dr. Haj-Hamed advised that Dr. Mejia had been a co-worker of his. Dr. Mejia, who is also licensed in Ohio, entered into a Consent Agreement with the Board on June 11, 2003, on the basis of the Kentucky Board's suspension of his license. (Tr. at 609-610; St. Ex. 10 at 31; Resp. Ex. P).

    Dr. Haj-Hamed indicated that, when he had asked Dr. Sultan to be his supervising and monitoring physician, he had referred to Dr. Mejia's Consent Agreement to determine Dr. Sultan's duties, because he had not yet had his own Consent Agreement. Dr. Haj-Hamed explained that his attorney had advised him that Dr. Haj-Hamed's Consent Agreement would be drafted with the same terms as Dr. Mejia's. He and Dr. Sultan both testified that they had discussed the duties of a supervising physician with Dr. Mejia and Georges M. Feghali, M.D., Dr. Mejia's supervising physician. Dr. Haj-Hamed indicated that he had not carefully reviewed the final version of his own Consent Agreement with his attorney before signing it. He stated that he had "assumed it [was] similar to the original one that we discussed." (Tr. at 136-140, 142, 338-339, 448-450, 640-641, 644-645).

The supervision requirement in Dr. Mejia's Consent Agreement is similar to Dr. Haj-Hamed's, except that there is no explicit on-site requirement:

> Dr. Mejia agrees to limit his practice to his employment at Good Samaritan Hospital in Cincinnati, Ohio. He further agrees that his practice in the hospital and in the hospital outpatient clinic shall be supervised at all times by Georges M. Feghali, M.D.

(Resp. Ex. P at 2).

14. Dr. Haj-Hamed testified that, after signing his Consent Agreement, he had asked his attorney for a copy, and that she had advised him that he would receive a copy from the Board. Dr. Haj-Hamed testified that he had not received his "compliance package," including a copy of the Consent Agreement, from the Board until late January 2004. He advised that he had been confused about the requirements of his Consent Agreement, even after reviewing the compliance package. (Tr. at 648-649).

15. On February 9, 2004, Dr. Haj-Hamed attended a probationary conference at the Board's offices with his attorney, Douglas E. Graff, Esq. Also in attendance at the conference were Raymond J. Albert, Supervising Member of the Board; Rebecca J. Albers, Assistant Attorney General; Danielle C. Bickers, Compliance Officer; and Charles A. Woodbeck, Compliance Enforcement Attorney. (St. Ex. 2).

    Dr. Haj-Hamed testified that he had not been given clear guidance about his Consent Agreement at the probationary conference. He testified, "The problem with those meetings, you're talking to multiple persons giving you subjective different answers and you don't know who to take from." The tape and transcript of the conference show that, although Dr. Haj-Hamed had asked questions about his Consent Agreement, he had failed to inquire about the on-site requirement. (Tr. at 649; St. Exs. 2, 15). Rather, Dr. Haj-Hamed represented to the Board that he had been complying with that provision:

> MR. ALBERT: Doctor, we're here today, I guess, to talk about—to make sure you understand your consent agreement, you understand everything that's in it, and you understand the restrictions in your practice. And for that purpose, we have Mr. Woodbeck who—Attorney Woodbeck is our—one of our Enforcement Coordinators, he's here today. And I'm going to turn it over to him now and he's got a—he has some questions he wants to ask you.
>
> * * *

MR. WOODBECK: Okay. You agree to limit your practice to employment there at [Tri-State]?

DR. HAJ-HAMED: Yes.

MR. WOODBECK: And that you should be supervised and monitored on site at all times by Tariq Sultan, M.D.

DR. HAJ-HAMED: Yeah.

MR. WOODBECK: Do you understand on—on-site means that he's right there.

DR. HAJ-HAMED: Yeah.

MR. WOODBECK: And any questions on that at all?

(Inaudible response).[3]

MR. WOODBECK: Okay. Now, when he's not on-site, you're not practicing—

DR. HAJ-HAMED: Yes.

MR. WOODBECK: —is that clear?

Okay. And let's see. You—You know that he's supervising and monitoring (unintelligible) already submitted a report.

DR. HAJ-HAMED: Yes.

MR. WOODBECK: And he * * * is monitoring and supervising you 100 percent of the time; is that correct?

DR. HAJ-HAMED: Yes.

(St. Ex. 2 at 3-4; St. Ex. 15).

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[3] Dr. Haj-Hamed initially testified that the "inaudible response" was "probably" an inquiry about the on-site requirement. After listening to this portion of the audio recording again, he testified that, "I can't make what I said there." The audio recording demonstrates that the "inaudible response" is quite brief, and it sounds as if it consisted of only one or two words. (Tr. at 682-684; St. Ex. 15).

At hearing, Dr. Haj-Hamed was asked why he did not explain to Mr. Woodbeck that he had not been complying with the on-site requirement:

> Q. [Mr. Perry] You agree with me this was—If you had questions about what you were doing, this would have been the perfect opportunity for you to say, 'Now, wait a minute. This isn't what I have been doing. He's not on-site. I'm practicing when he's not there?'
>
> I mean, wouldn't you agree that's the time to bring that up?
>
> * * *
>
> THE WITNESS: Well—
>
> * * *
>
> THE WITNESS: —even when that was brought up, we never got clear answers.
>
> BY MR. PERRY:
>
> Q. How much more clear—
>
> A. My—
>
> Q. —does it mean that when he's not on-site, you're not practicing? How much more clear do you need it before you can understand it?
>
> A. There was no explanation of the explanation of the word 'supervision' and 'monitor' and the difference between the two. And today, I don't know the difference.
>
> Q. My question is: On Line 14, this word, 'on site,' how much more clear does that need to be to you?
>
> * * *
>
> THE WITNESS: Well, again, 'on-site,' could it be does he have to be where I am, or when I need him or I can get him on-site?
>
> BY MR. PERRY:
>
> Q. His question was: '...when he's not on-site, you're not practicing—'

And you said, 'Yes.'

Are you telling us now that that was not clear to you when you said, 'Yes?'

* * *

THE WITNESS: I—(Shakes head.)

BY MR. PERRY:

Q. Now, the medical records that we have from Oakley that you identified for us earlier, these go back, some of them, as far as December 9th of 2003. And this conversation with Mr. Woodbeck is February 9th, 200[4]. That's two months you've been working in Oakley; is that correct?

A. I worked in Oakley, correct.

Q. So there had to have been times—Based on Dr. Sultan's testimony and your own admissions, that—he was not at Oakley very often. There were times that you were practicing when Dr. Sultan was not on-site?

A. Not physically present, yes, but he was available for me.

Q. And did you tell Mr. Woodbeck that?

A. Well, he can be on-site in short period of time.

Q. Visiting, right?

A. No. If I need him for care, he could be there.

Q. He could be. But would he necessarily be?

A. Yes. If I need him.

Q. At all times?

A. If I need him. But I mainly don't need him because I have very simple cases, as you see. They're all sore throats.

Q. So your answer, if I understand you correctly, is despite what the consent agreement says, 'on-site' only applies if you really need him; is that fair to say?

A. Well, we have two terms here. We have 'monitoring' and we have 'supervision.'

Q. I'm talking about 'on-site.'

A. Right. Which one are you directing that to, the monitoring or to the supervision?

Q. Mr. Woodbeck's question was, '...when he's not on-site, you're not practicing—' You said, 'Yes.'

He's not talking about supervision or monitoring. He's just talking about you not practicing when Dr. Sultan is not on-site. And you said, 'Yes.' Now, that clearly, from these records that we have in State's Exhibit 8, that wasn't the case. But that's not what you told Mr. Woodbeck, is it?

A. I guess it was misunderstanding about the practicing of medicine.

(Tr. at 441-444).

Dr. Haj-Hamed maintained that, even after his conversation with Mr. Woodbeck at the probationary conference, he had believed that his Consent Agreement was identical to Dr. Mejia's. However, he also claimed that he had remained confused about his Consent Agreement. Dr. Haj-Hamed repeatedly emphasized that the terms "supervising" and "monitoring" had not been made clear to him. Dr. Haj-Hamed also expressed confusion about the meaning of the phrase "on site." (Tr. at 441-444, 447-448, 450, 456-458, 463, 474, 484-485, 646, 649-651, 661, 679, 681). He testified:

> Well, to my understanding, again, the word 'on-site,' does he have to be physically next to me or does he have to be available? That's the confusion I had.

(Tr. at 448).

16. On April 27, 2004, an investigatory conference was held to discuss Dr. Haj-Hamed's compliance with his Consent Agreement. Present at the conference were: Dr. Haj-Hamed,

Mr. Graff, Mr. Woodbeck, Ms. Albers, Mr. Schmidt, Mr. Albert, and Lance A. Talmage, M.D., Board Secretary. (St. Exs. 5, 15).

At the investigatory conference, Dr. Haj-Hamed was questioned further about his compliance with the on-site requirement:

> WJS [Mr. Schmidt]: Now your consent agreement says you're to be supervised and monitored on-site at all times by Tariq Sultan, M.D. So do you understand that for you to be working there at the office Dr. Sultan needs to be there and supervising and monitoring you?
>
> GHH [Dr. Haj-Hamed]: I had some part of confusion about the elaboration of this. Like, I was telling Mr. Edwards that a lot of time Dr. Sultan had to leave to see a nursing home patient. We have nursing homes who are located like, on the same street. So he would run see the patient. In the meantime I would be involved with patients. I can't just cut my care and say that I'm frozen until he gets back. However he's still on the phone, he's with me if I need something.
>
> WJS: How often does that happen?
>
> GHH: I mean that could happen every, I'd say once a week or so. Again, it's hard like in medicine or so to put like deadline or . . . it's just I don't know how the emergency would happen.
>
> WJS: And when it does happen, give me a time frame he might be gone. Could it be anything from ten minutes to the rest of the day is that?
>
> GHH: Probably shorter. I mean the farthest nursing home is . . . he could be in and out in probably an hour or so.
>
> WJS: So an hour, never beyond an hour?
>
> GHH: If it is longer I make sure (inaudible) I don't have no new patients.
>
> WJS: And other than that if you're at the office and you are working, he is on site supervising you, is that correct?
>
> GHH: Yes.

(St. Ex. 5 at 4-5; St. Ex. 15).

At hearing, Dr. Haj-Hamed repeatedly attempted to evade admitting that Dr. Sultan had generally not been on site while he was practicing. He eventually acknowledged that, contrary to his statements at the investigatory conference, Dr. Sultan had been on site "very little of the time" while Dr. Haj-Hamed was practicing. When asked why he had not told Mr. Schmidt about all of the times that he had practiced without Dr. Sultan on site, Dr. Haj-Hamed responded, "Well, at that point, he is not asking." (Tr. at 350-353, 442-444, 458, 474-476, 478-480, 483, 491-493, 686-689).

17. Dr. Haj-Hamed suggested that Dr. Sultan had been on site with him more often than Dr. Sultan had described in his testimony. (Tr. at 351, 458, 479). Dr. Haj-Hamed testified,

> [Dr. Sultan] was coming as needed, actually. He would still come to see a patient at any day of the week. He can come and sign his documents at any day of the week. He lives there at—He is the chairman of the mosque close by—

(Tr. at 349).

However, Dr. Haj-Hamed admitted that he had never effectuated a plan with Dr. Sultan to ensure that he would be on site while Dr. Haj-Hamed was practicing. Dr. Haj-Hamed explained that he had not had an agreement with Dr. Sultan because Dr. Haj-Hamed had "no control over [Dr. Sultan's] time."' (Tr. at 351-359, 376-377).

Despite the lack of a plan, Dr. Haj-Hamed testified that Dr. Sultan had always been available by phone, even if he had not been physically present at Tri-State. He further testified that he usually had not needed Dr. Sultan's assistance, because he had had very simple cases. Dr. Haj-Hamed testified that he had seen Dr. Sultan every day, and sometimes several times a day, at Tri-State, at social meetings, or at the nearby mosque that both he and Dr. Sultan attend five times daily. (Tr. at 443, 662-664).

<u>The February 10, 2004, Lomotil prescription</u>

18. Dr. Haj-Hamed testified that he does not have a valid DEA license in Ohio or Kentucky. He stated that he had surrendered his Kentucky DEA license two years ago, and that his Ohio DEA license expired on October 15, 2003. (Tr. at 396-398).

19. Paragraph 1 of the "Agreed Conditions" in Dr. Haj-Hamed's Consent Agreement provides:

> Dr. Haj-Hamed shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.

(St. Ex. 10 at 12).

Paragraph 2 of the "Agreed Conditions" in the Consent Agreement, states, in pertinent part:

> Dr. Haj-Hamed shall not administer, dispense, prescribe or personally furnish any controlled substances as defined by state or federal law.

(St. Ex. 10 at 12).

Despite these provisions, and despite not having a valid DEA license, on February 10, 2004, Dr. Haj-Hamed issued a prescription for Lomotil, a Schedule V controlled substance. (Tr. at 396-399; St. Exs. 3A, 4; St. Ex. 9 at 3, 5).

20. Stephanie Sheard, R.Ph., testified that she is a licensed pharmacist in Ohio, and that she has worked as a pharmacist for two years. She advised that she is the Pharmacy Manager at a Target store in Cincinnati. She stated that she has never met Dr. Haj-Hamed, but that she is familiar with him because she has received prescriptions from the Urgent Care Center where he had worked. She also stated that she believes that she has spoken to Dr. Haj-Hamed on the phone a "couple times." (Tr. at 35-37).

21. Ms. Sheard testified that, on February 10, 2004, she had generated a phone prescription for Patient 1 for Lomotil, 2.5 milligrams, a controlled antidiarrheal medication.[4] (Tr. at 38-40; St. Ex. 3A). Ms. Sheard stated that the prescription had been phoned in by Dr. Haj-Hamed:

> The particular day in—or, the prescription, I believe it was phoned in on 2-10, February 10th, from Dr. Haj-Hamed. To my record, it was the doctor, as far as I know. I have never met him in person, so I didn't, you know, know for sure if that was him on the phone, but that was who it was stated to be.

(Tr. at 39).

Ms. Sheard admitted on cross examination that she does not remember all of her phone prescriptions, and she had no explanation for why she remembered this particular phone call, except that she recollected that the caller had a thick accent. However, she testified that she is certain that she had talked to Dr. Haj-Hamed, because she had written his name on the prescription. She explained that it is her practice to write the name of the individual calling in the prescription on a phone prescription. (Tr. at 47, 49-50).

22. Ms. Sheard testified that, later on the same day that the Lomotil prescription had been called in, Patient 1 had arrived at the pharmacy with a handwritten prescription for Lomotil and Phenergan. Ms. Sheard advised that it is not uncommon for the pharmacy to receive a

[4] Ms. Sheard testified that Lomotil is a Schedule IV drug, but the Physicians' Desk Reference lists it as a Schedule V. (Board Exhibit Y).

handwritten prescription from a patient after the physician has called it in. Ms. Sheard testified that she had already filled the Lomotil prescription with Lonox, a generic equivalent, by the time that the handwritten prescription had been presented to her. (Tr. at 43-44, 57, 71-72; St. Ex. 9A).

The handwritten prescription was not signed by Dr. Haj-Hamed, and there was no DEA number provided. The instructions for Lomotil are difficult to decipher, but apparently state, "lomotil otc 2 mg." Ms. Sheard advised that "otc" means "over the counter." Ms. Sheard further advised that Lomotil is available in only one strength: 2.5 milligrams, and that it is not available over the counter. Ms. Sheard acknowledged that Imodium is a similar over-the-counter antidiarrheal medication with a dosage of 2 milligrams, and that a physician does not require a DEA number to prescribe Imodium. She admitted that she had not noticed the differences between the phone prescription and the handwritten prescription. (Tr. at 44, 49, 55, 58, 61, 71; St. Ex. 9A).

Ms. Sheard testified that physicians sometimes fail to provide their DEA number, either with phone or written prescriptions. She indicated that, when this occurs, she obtains the DEA number from pharmacy records. She admitted that she does not check the validity of the DEA numbers in the pharmacy records. (Tr. at 40, 53-54).

At hearing, Ms. Sheard initially indicated that she had obtained Dr. Haj-Hamed's DEA number for the phone prescription from pharmacy records. However, on cross-examination she was confronted with a written statement to a Board investigator, in which she had claimed that Dr. Haj-Hamed had provided his DEA number during her phone conversation with him. Ms. Sheard then testified that she did not recall how she had obtained the DEA number. (Tr. at 40-41, 50-51; Resp. Ex. A).

Ms. Sheard acknowledged that the single handwritten prescription for both Lomotil and Phenergan was unlawful because, under Ohio law, a prescription for a controlled substance cannot include more than one medication. Further, Ms. Sheard admitted that Ohio law requires a physician's signature on a Phenergan prescription, but that the handwritten prescription had not been signed by Dr. Haj-Hamed. She testified that she had not called Dr. Haj-Hamed about this error, but rather that she had written "Dr. Haj-Hamed" on the prescription herself, because she had already spoken to Dr. Haj-Hamed when he had phoned in the Lomotil prescription. (Tr. at 52-53, 61-63, 69).

Ms. Sheard denied that, in an attempt to rectify the problems posed by the written prescription for Patient 1, she had written the separate Lomotil prescription herself, without any involvement from Dr. Haj-Hamed. However, she conceded that she had "probably" made "clear errors" in processing the February 10, 2004, prescriptions for Patient 1. (Tr. at 52-53, 55-56, 66-67).

23. Ms. Sheard also testified that, after she had been contacted by a Board investigator, Dr. Haj-Hamed had called her and stated that he had not intended to write for a controlled substance, but rather that he had intended to write for Imodium. (Tr. at 44-45).

24. Dr. Haj-Hamed denied that he had phoned in a Lomotil prescription to Ms. Sheard on February 10, 2004. During cross-examination, he claimed that he never calls in prescriptions himself, but on direct examination he testified that he "sometime[s]" calls them in. (Tr. at 391, 627).

    Dr. Haj-Hamed indicated that Ms. Sheard had made an error in dispensing a controlled antidiarrheal medication to Patient 1. (Tr. at 629). Dr. Haj-Hamed testified that the handwritten prescription for Phenergan and Lomotil was not, in fact, intended to be a prescription, and that he had demonstrated that intention in three ways:

    > First of all, it's not signed. Second, if it meant to be for the Lomotil brand, the controlled substance, it must be single medicine on single prescription, which is not here. And third, it must have a DEA number on it to go with controlled substance if it's meant for controlled substance, which is not there.

    (Tr. at 626).

    Dr. Haj-Hamed was asked why, if he did not intend the February 10, 2004, purported prescription to be a prescription, he had written for Phenergan, which requires a prescription. (Tr. at 389). Dr. Haj-Hamed responded:

    > A. [Dr. Haj-Hamed] Because I wrote another one separate Phenergan that I don't see here. When I realized that I had two and one of them is over-the-counter, that I don't sign because it's over-the-counter, so I wrote separate one for Phenergan.
    >
    > Q. [Mr. Perry] Your testimony is that you wrote a separate prescription for Patient 1 for Phenergan—
    >
    > A. Yes.
    >
    > Q. —all by itself—
    >
    > A. Yes.
    >
    > Q. —that day?
    >
    > A. Yes.

Q. Would you have any explanation why we have no record of that Phenergan prescription?

A. You have to ask the pharmacist. She should have it. But it looks like from what she said, she filled it from this one without calling me. And she didn't think that she needed to call me.

(Tr. at 390).

Dr. Haj-Hamed maintained that "lomotil otc" had been a valid direction to the pharmacist to dispense Imodium, or some other noncontrolled antidiarrheal medication, to Patient 1:

Q. [Mr. Perry] Now, as you sit there today, do you agree with me that there is no Lomotil over-the-counter?

A. [Dr. Haj-Hamed] There is alternatives. And that's what we do. We write what's close to it, and whatever the pharmacy have alternative, they give them. Like when you wrote Ultram, if they have tramadol, they give tramadol.

Q. And what did you write?

A. I wrote over-the-counter Lomotil—

Q. But Lomotil—

A. —2 milligram.

Q. —is not available over the counter, is it?

A. There is alternatives to it.

Q. But a drug by that name is not available over-the-counter?

A. Not exactly that name, but there is close enough one with the same milligram and the same directions on the shelf.

* * *

A. I didn't write the word 'alternative,' but—

Q. You wrote—

A. —having the 2 milligram should be enough for any competent pharmacist to know it's not Lomotil because it's well known Lomotil is 2.5 milligram.

Q. So you're telling us that it's okay for you to write down—

A. It's not prescription I write.

Q. Lomotil's not prescription?

A. No, no. I say what I wrote, just a hint for the pharmacist and the patient to what to pick up. Otherwise, I would have signed it.

(Tr. at 380-382).

Dr. Haj-Hamed testified that he has seen erroneously filled prescriptions "on [a] daily basis." He testified about one example. He stated that, on June 25, 2004, after his Ohio license had been suspended, a pharmacy had filled a prescription written by another Tri-State physician, and mislabeled the medication bottles to indicate that the prescriptions had been written by Dr. Haj-Hamed. (Tr. at 629-634).

25. Timothy J. Benedict, R.Ph, testified that he has worked as a pharmacist in Ohio since 1975, that he has worked for the Ohio State Board of Pharmacy [Pharmacy Board] since 1980, and that he has been Assistant Executive Director for the Pharmacy Board since 1998. Mr. Benedict testified as an expert for the limited purpose of establishing the normal directions for the medications Lomotil and Imodium. (Tr. at 188, 190).

Mr. Benedict testified that the normal directions for Lomotil are "one to two tablets every six hours as needed," and that the normal directions for Imodium are "two tablets and then repeat with an additional tablet after each loose stool, up to a maximum of * * * 16 milligrams a day." Mr. Benedict further advised that the February 10, 2004, handwritten prescription for Lomotil indicates directions of "one or two tablets every six hours as needed." (Tr. at 191-192; St. Ex. 9A).

Dr. Haj-Hamed testified that, despite Mr. Benedict's testimony, "one to two tablets every six hours" is the usual dosage for Imodium as well as Lomotil. (Tr. at 386).

Failure to Make Patient Records Available to the Board

26. Paragraph 2 of the "Agreed Conditions" in Dr. Haj-Hamed's Consent Agreement, states, in pertinent part:

> Dr. Haj-Hamed shall make his patient records available for review by an agent of the Ohio Board upon request.

(St. Ex. 10 at 12).

27. William J. Schmidt, Esq., testified that he is the Assistant Executive Director for the Board, that he has worked for the Board since 1978, and that he is a licensed attorney. He advised that, as Assistant Executive Director, he oversees the compliance and investigatory functions of the Board. Mr. Schmidt testified that he has been involved in Dr. Haj-Hamed's case since Dr. Haj-Hamed entered into his Consent Agreement, and that he is familiar with Dr. Haj-Hamed's Consent Agreement. (Tr. at 206-208).

Mr. Schmidt testified that, on April 26, 2004, he and Douglas E. Edwards, a Board investigator, had visited the West Chester office of Tri-State with two purposes: to interview Dr. Sultan and Dr. Haj-Hamed and to review Dr. Haj-Hamed's patient records. Mr. Schmidt explained that they were following up on a previous interview of Dr. Sultan by Mr. Edwards, in which Dr. Sultan had indicated that Dr. Haj-Hamed had not been complying with his Consent Agreement. (Tr. at 213-214).

Mr. Schmidt advised that he and Mr. Edwards had seen Dr. Haj-Hamed as they were walking into the office, but that they had first interviewed Dr. Sultan. Mr. Schmidt further advised that they had never interviewed Dr. Haj-Hamed because, while they were speaking with Dr. Sultan, Dr. Haj-Hamed brought a phone to Mr. Edwards and advised that Mr. Graff, Dr. Haj-Hamed's counsel, wished to speak with Mr. Edwards. Mr. Schmidt testified that, after Mr. Edwards had finished speaking with Mr. Graff, Mr. Schmidt had talked to Mr. Graff. Mr. Schmidt related that Mr. Graff had indicated that Dr. Haj-Hamed would not speak with Board staff without his counsel present. Accordingly, an investigatory conference was scheduled for April 27, 2004, the next day, at the Board offices. (Tr. at 214-218).

Mr. Schmidt further stated that, during the phone conversation, Mr. Graff had denied the Board access to Dr. Haj-Hamed's patient records. (Tr. at 216). Mr. Schmidt advised that Mr. Graff had voiced the following objections to Board access to the patient records:

- The Board must first produce a signed order from the Secretary and Supervising Member of the Board;

- The Board must subpoena the records;
- The Board must first provide a list of the patients whose records are requested.

(Tr. at 216-217).

The next day, at the April 27, 2004, investigatory conference, the following exchange occurred:

> WJS [Mr. Schmidt]: Oh, by the way, Doug, not letting us have access to those records yesterday was another violation.
>
> DG [Mr. Graff]: No, I don't believe so. You guys may not be HIPPA[5] compliant, but he is. He can't just open up his records to anybody that walks in the door.
>
> WJS: Well, we'll work that one out with you . . .
>
> [Ms.] Albers: We're not subject to HIPPA (inaudible) licensing authority.
>
> WJS: HIPPA was not even brought up. What was brought up was that I was there without Dr. Talmage and Mr. Albert's signature saying that he is to share that with us. I read you the way it's really worded and that is shall make them available to an agent of the Board which is Doug and myself.
>
> DG: We don't have any problem with that. You asked for every record for every patient he has seen since February and he cannot do that without a request. That's foolish.
>
> WJS: I asked to look at them because that's what's required. We wanted to inspect them and you would not let us. We'll be back in touch.
>
> DG: Bill, we will make them available upon request.

(St. Ex. 5 at 23; St. Ex. 15).

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[5]"HIPPA" refers to the Health Insurance Portability and Accountability Act, which restricts the release of patient records to protect patient privacy. However, HIPPA permits the disclosure of protected patient records to health oversight agencies in connection with licensure or disciplinary actions. (Resp. Ex. B at 1-2, 5-6).

28. Dr. Haj-Hamed testified that, on April 26, 2004, when Mr. Schmidt and Mr. Edwards had visited Tri-State and spoken with Mr. Graff at Dr. Haj-Hamed's request, he had not been aware that his patient records had been requested. He advised that he had left the room after handing the phone to Mr. Edwards. Despite the fact that he had been present at the April 27, 2004, investigatory conference at which this issue was discussed, and despite the fact that he had been handed a subpoena for the records at the conference, Dr. Haj-Hamed claimed that he did not know whether or not his patient records had been provided to the Board on April 26, 2004. (Tr. at 402-404, 638; St. Ex. 5 at 23; St. Ex. 15).

    Further, despite the testimony that Board staff had asked Dr. Haj-Hamed's counsel for Dr. Haj-Hamed's patient records; despite the evidence that the records request was discussed in Dr. Haj-Hamed's presence at the April 27, 2004, investigatory conference; and despite the fact that Dr. Haj-Hamed was handed a subpoena for the medical records at the April 27, 2004, conference, Dr. Haj-Hamed denied that the Board had ever requested his patient records from him:

    Q. [Mr. Graff] The State has charged you with failing to provide records upon request as required on your—under your consent agreement. Do you recall that?

    A. [Dr. Haj-Hamed] I heard that in the testimony, but I haven't been asked myself to provide that.

    Q. At any time while you have been under a consent agreement with the State Medical Board of Ohio from November of 2003 to this very date, has the State ever asked you for records?

    A. No.

    (Tr. at 634).

29. Dr. Haj-Hamed also indicated that he could not have complied with the Board's request because he does not "own" the patient records; rather, Tri-State does. Dr. Haj-Hamed disavowed any current or prior ownership interest in Tri-State, which is a limited liability corporation. However, in a March 24, 2004, psychiatric evaluation that Dr. Haj-Hamed underwent pursuant to his Kentucky Board action, it was reported that Dr. Haj-Hamed had referred to himself as an entrepreneur, and that he had stated that "he employs approximately 30 people and makes payroll every two weeks of $50,000.00." (Tr. at 329, 586, 635; St. Ex. 13; Resp. Ex. F).

    Dr. Haj-Hamed explained that when he had referred to payroll and employees, he had meant that, in his management position at Tri-State, he had felt responsible to help with payroll and to "provide guidance" in that area. (Tr. at 591-592).

Dr. Haj-Hamed's testimony contradicts his Agreed Order with the Kentucky Board, in which he stipulated to the following statement:

> The licensee [Dr. Haj-Hamed] owns two Urgent Care Centers, one in Cold Spring, Kentucky and the other in Oakley, Ohio.

(St. Ex. 12 at 1). Dr. Haj-Hamed claimed that this had been a mistake which he had "requested through motions to change," but that the change had never been made. (Tr. at 612-613).

30. Dr. Haj-Hamed provided information obtained from county auditors' websites to indicate that he does not have an ownership interest in Tri-State. However, these web pages merely provide information about the ownership of real estate, and they do not prove anything about ownership interests in the corporation. Further, there was no supporting testimony or evidence that these web pages provided complete, up-to-date information about ownership interests. (Tr. at 589-591; Resp. Exs. G, H).

    Dr. Haj-Hamed also submitted a copy of the Articles of Organization for "Tri-State Urgent Care, L.L.C." This document also proves nothing about the ownership of Tri-State, because it does not list the persons who have ownership interests in Tri-State. (Resp. Ex. F).

    Lastly, Dr. Haj-Hamed submitted documentation that he had received paychecks from Tri-State. However, nothing in the record excludes the possibility that Dr. Haj-Hamed had an ownership interest in Tri-State while being paid as an employee. (Tr. at 586-588; Resp. Exs. D, E).

31. Mr. Schmidt advised that the Board had received the requested patient records after issuing subpoenas to the West Chester and Oakley offices of Tri-State. (Tr. at 229-231).

Additional Information

32. Dr. Haj-Hamed testified that, pursuant to the disciplinary proceedings against him in Kentucky, he had been assessed by the Center for Personalized Education for Physicians [CPEP] on November 6-7, 2003. CPEP recommended that Dr. Haj-Hamed engage in educational activities in certain areas, including documentation and prescribing controlled substances. Dr. Haj-Hamed indicated that CPEP's recommendations had been incorporated into his Kentucky Board Agreed Order. Dr. Haj-Hamed testified that he continues, "step-by-step," to complete the recommended activities, and that he has already completed some of the courses. (Tr. at 613-616, 618-619; St. Ex. 12; Resp. Exs. I, J).

    Dr. Haj-Hamed further advised that his Kentucky Board Agreed Order does not require his practice to be monitored. Rather, pursuant to CPEP recommendations, he is required to

periodically meet with educational preceptors to discuss his charts and educational topics. (Tr. at 619; St. Ex. 12; Resp. Ex. I).

33. Dr. Haj-Hamed testified that he had also submitted to a psychiatric evaluation in pursuit of the settlement of his Kentucky Board action. (Tr. at 592-593; St. Ex. 13). The evaluation was conducted by William D. Weitzel, M.D., who concluded:

> It is my professional opinion that [Dr. Haj-Hamed] is not experiencing any psychiatric disorder or condition with any collective functional or cognitive impairment that would prevent him from participating successfully with the CPEP Educational Program that will be crafted for him.

(St. Ex. 13 at 2).

FINDINGS OF FACT

1. On November 14, 2003, Ghassan Haj-Hamed, M.D., entered into a Consent Agreement with the Board, in which Dr. Haj-Hamed's Ohio license to practice medicine and surgery was reinstated, subject to certain probationary terms, conditions, and limitations.

2. Paragraph 1 of the Consent Agreement states: "Dr. Haj-Hamed shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio." Despite this provision, on February 10, 2004, Dr. Haj-Hamed prescribed Lomotil 2.5 mg, a Schedule V controlled substance under both state and federal law, to Patient 1, although, at that time, he did not hold a valid DEA registration to prescribe controlled substances.

3. Paragraph 2 of the Consent Agreement states: "Dr. Haj-Hamed shall not administer, dispense, prescribe or personally furnish any controlled substances as defined by state or federal law." Despite this provision, on February 10, 2004, Dr. Haj-Hamed prescribed Lomotil 2.5 mg, a controlled substance under both state and federal law, to Patient 1.

4. Paragraph 2 of the Consent Agreement further states: "Dr. Haj-Hamed shall make his patient records available for review by an agent of the Ohio Board upon request." On April 26, 2004, at the West Chester, Ohio, office of Tri-State Urgent Care, an agent of the Board requested Dr. Haj-Hamed to make his patient records available for review pursuant to this provision. Through his attorney, Douglas E. Graff, Esq., Dr. Haj-Hamed declined to make his patient records available for review by an agent of the Board.

5. Paragraph 3 of the Consent Agreement states:

> Dr. Haj-Hamed agrees to limit his practice to his employment at Tri-State Urgent Care in Cincinnati, Ohio. He further agrees that his practice

> at Tri-State Urgent Care shall be supervised and monitored on site at all times by Tariq Sultan, M.D., who is board certified in Internal Medicine.
> * * *
>
> Dr. Sultan shall supervise and monitor Dr. Haj-Hamed and his medical practice, and shall review 100% of Dr. Haj-Hamed's patient charts.

Despite this provision, Dr. Haj-Hamed practiced when Dr. Sultan, his supervising and monitoring physician, was not on site.

Further, on or about the dates listed below, during times when Dr. Sultan stated that he was not on site to supervise, Dr. Haj-Hamed issued prescriptions as follows:

Patient 1	Tuesday	2-10-04
Patient 1	Thursday	4-22-04
Patient 2	Saturday	3-6-04
Patient 3	Thursday	3-18-04
Patient 4	Thursday	3-25-04
Patient 5	Tuesday	4-13-04
Patient 6	Thursday	4-15-04

CONCLUSIONS OF LAW

The acts, conduct, and/or omissions of Ghassan Haj-Hamed, M.D., as set forth in Findings of Fact 2 though 5, individually and/or collectively constitute a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.

* * * * *

The evidence demonstrates that Dr. Haj-Hamed has knowingly and repeatedly violated his November 14, 2003, Consent Agreement. Indeed, Dr. Haj-Hamed has shown little regard, if any, for the importance of abiding by his Consent Agreement. He was given an opportunity at his February probationary conference to resolve any misunderstanding that he had about the on-site requirement of his Consent Agreement, but instead Dr. Haj-Hamed lied, and affirmed that he had been following that requirement. At hearing, Dr. Haj-Hamed attempted to obfuscate his failure to comply with the on-site requirement of his Consent Agreement by claiming that the terms "supervise" and "monitor" were unclear.

Dr. Haj-Hamed further tried to evade responsibility for his misconduct by placing blame on the Board for failing to adequately notify Dr. Sultan of his duties under the Consent Agreement. The Consent Agreement, which Dr. Haj-Hamed admittedly had in his own possession by late

January 2004, explicitly requires Dr. Sultan to supervise and monitor Dr. Haj-Hamed on site. Dr. Haj-Hamed's failure to advise Dr. Sultan of the on-site requirement, even after it was clearly related to him at a February probationary conference, demonstrates that Dr. Haj-Hamed had no intention of complying with that aspect of his Consent Agreement.

Dr. Haj-Hamed failed to readily acknowledge any wrongdoing on his own part, despite clear evidence that he had failed to comply with the on-site requirement; he lied to the Board at his February 9, 2004, and April 27, 2004, conferences about his compliance with the on-site requirement; and he was evasive and argumentative at hearing. For these reasons, he was not a credible witness.

Therefore, the pharmacist's testimony that she had received a phone prescription for Lomotil from Dr. Haj-Hamed is more believable than Dr. Haj-Hamed's denial of the phone call. Further, Dr. Haj-Hamed's testimony that, by writing "lomotil," he meant "Imodium," and that he had not intended the February 10, 2004, prescription to be a prescription, strains credulity. This incident further demonstrates Dr. Haj-Hamed's pattern and practice of disregarding his Consent Agreement.

Lastly, Dr. Haj-Hamed's defenses to the charge that he had failed to release his patient records to the Board were numerous, but not compelling. Dr. Haj-Hamed did not demonstrate that he had a reasonable explanation for his failure to allow immediate access to the records. Rather, the evidence painted the picture of a physician who had attempted, and was continuing to attempt, to find any possible loophole to evade his responsibilities under his Consent Agreement.

Dr. Haj-Hamed has proved himself to be unwilling to comply with the mandates of this Board, and to be deceptive and obstructive in his dealings with the Board. The Board cannot effectively regulate such an individual. Accordingly, in the interest of public safety, permanent revocation is warranted.

PROPOSED ORDER

It is hereby ORDERED that:

> The certificate of Ghassan Haj-Hamed, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

This Order shall become effective immediately upon mailing of notification of approval by the Board.

Siobhan R. Clovis, Esq.
Hearing Examiner

State Medical Board of Ohio

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EXCERPT FROM THE DRAFT MINUTES OF JANUARY 12, 2005

REPORTS AND RECOMMENDATIONS

Dr. Davidson announced that the Board would now consider the findings and orders appearing on the Board's agenda. She asked whether each member of the Board had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Ghassan Haj-Hamed, M.D.; Valerie Ann McLin, M.D.; Daniel Howard Brumfield, M.D.; Jeffrey James Fierra, M.D.; Steven Franklin Greer, M.D.; Felicia K. Howard-McGrady, M.D.; Willie L. Josey, M.D.; Thomas R. Pickett, M.D.; and John Alexander Tripoulas, M.D. A roll call was taken:

ROLL CALL:	Dr. Egner	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Steinbergh	- aye
	Dr. Davidson	- aye

Dr. Davidson asked whether each member of the Board understands that the disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from dismissal to permanent revocation. A roll call was taken:

ROLL CALL:	Dr. Egner	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Steinbergh	- aye
	Dr. Davidson	- aye

Dr. Davidson noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters.

Dr. Davidson stated that if there were no objections, the Chair would dispense with the reading of the proposed findings of fact, conclusions and orders in the above matters. No objections were voiced by Board members present.

The original Reports and Recommendations shall be maintained in the exhibits section of this Journal.

GHASSAN HAJ-HAMED, M.D.

Dr. Davidson directed the Board's attention to the matter of Ghassan Haj-Hamed, M.D. She advised that, prior to the October 2004 meeting, objections to the original Report and Recommendation, along with attachments considered as additional information, were distributed to the Board. The Board moved to accept the additional information at the October meeting. Objections were filed to Hearing Examiner Clovis' Report of Remand and were previously distributed to Board members; however, these objections were not received in a timely manner. Dr. Haj-Hamad's attorney submitted a motion requesting that the Board accept the untimely objections. Dr. Davidson asked whether the assistant attorney general objected to the admission of these objections into the record.

Mr. Perry advised that he did not object.

DR. BHATI MOVED TO ADMIT THE OBJECTIONS TO THE REPORT OF REMAND INTO THE RECORD. DR. BUCHAN SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Steinbergh	- aye

The motion carried.

Dr. Davidson advised that the objections will be admitted into the record and considered by the Board.

Dr. Davidson continued that a request to address the Board has been timely filed on behalf of Dr. Haj-Hamed. Five minutes would be allowed for that address.

Dr. Haj-Hamed was accompanied by his attorney, Douglas E. Graff.

Mr. Graff stated that he believes that there are some preliminary matters that need to be addressed before

the Board addresses the Report and Recommendation. He advised that the State of Ohio has filed two motions in this matter that should be considered beforehand. One motion is for a final order on the summary suspension, which was filed before the October meeting and still remains pending with the remand. The second is for a ratification of the determination of the Secretary and Supervising Member on the summary suspension, which was filed before this meeting. Mr. Graff added that he also filed a motion earlier in the day to review the procedural and evidentiary rulings of the Hearing Examiner and the Substitute Hearing Examiner. These matters are timely and should be considered before the Report and Recommendation. Mr. Graff asked that they be considered at this time, before Dr. Haj-Hamed's oral address. He added that, if the Board asks for additional information on the motions, counsel should be given that opportunity to enlighten the Board.

Mr. Dilling stated that the Board will discuss the Report and Recommendation and will entertain the motions as well. He explained that, at this time, Dr. Haj-Hamed is being given five minutes to address the Board on the Report and Recommendation itself; then the Board will take up the issues raised inthe objections.

Dr. Davidson stated that Dr. Haj-Hamed will have an opportunity to speak again.

Mr. Graff stated that, as the Report and Recommendation may be subject to change due to the ruling on the motions, he would like to defer consideration of the Report and Recommendation until those rulings have been made by the Board, according to the provisions of the hearing rules. The motions and procedural matters, as well as evidentiary matters, are subject to review by the Board. Those would affect whether or not the Report and Recommendation, as it stands, is timely before the Board or whether it will be subject to a remand, as it was in October. Mr. Graff added that he'll work with the Board however the Board wants. He just wants to make sure that they have an opportunity to discuss all these issues timely.

Mr. Dilling stated that there will be that opportunity. He stated that he understands Mr. Graff's recommendation. If, in fact, the Board does decide to remand this matter later, he apologizes in advance for wasting anybody's time.

Mr. Graff thanked Mr. Dilling and addressed the Board. He stated that he is here on behalf of Dr. Haj-Hamed, who is also present today. He remarked that this is an unusual case, and it has caused great controversy between himself, the State and, unfortunately, also with members of the Board at the October meeting. Mr. Graff apologized for his behavior at that meeting, but added that this is a matter of significance. This is the first time the Board has handled a matter like this differently. This was a summary suspension, based on a determination of the Secretary and Supervising Member. That written determination talked about a violation of Section 4731.22(B)(16), the failure to pay license renewal fees. Mr. Graff stated that, clearly, that was in error. He added that, unfortunately, that is the only written determination of the Secretary and Supervising Member. That is what Mr. Schmidt put forth in the hearing, and that's what he said the Secretary and Supervising Member determined. That was all that they had.

Mr. Graff continued that, in the hearing, the original Hearing Examiner specifically said that they would not be able to look at the intent of the Secretary and Supervising Member, but would be bound by their written word. She ruled that in accordance with the Consent Agreement, but it goes to all writings of the Secretary and Supervising Member, and parol evidence was excluded from the entire hearing. However, Mr. Graff noted, the Hearing Examiner, based on Mr. Schmidt's discussion of parol evidence – about a document that he didn't prepare, that he didn't know about, that he hadn't seen and that the Secretary and Supervising Member had not informed him about – decided to take and change the intent of the written word, based upon her understanding of the parol evidence. Mr. Graff stated that that's wrong and can't stand.

Mr. Graff stated that he has filed objections in this case. Dr. Haj-Hamed was also charged with a violation of his consent agreement with the Board for failing to have adequate supervision and for writing prescriptions. He was brought before the Hearing Examiner, and the prescriptions were brought before the Hearing Examiner and the pharmacist. The pharmacist said that she received a piece of paper from Dr. Haj-Hamed's office that was unsigned, that did not have a DEA number on it, that had the listing of "Lomotil OTC 2mg.," and she wrote Dr. Haj-Hamed's name on the prescription, added his DEA number, which was both inactive and from the State of Kentucky, and decided it was a prescription, after which she dispensed Lomotil, a Schedule V controlled substance, at 2.5 mg. Mr. Graff stated that that is the only prescription alleged against Dr. Haj-Hamed. Mr. Graff stated that the pharmacist admitted in the record that she made an error.

Mr. Graff stated that those in practice know that, without signing a prescription or putting your DEA number on a prescription, it can't be a valid order for a pharmacist to dispense any controlled substance, which Lomotil is. It doesn't come in 2 mg. Unfortunately, it doesn't come over-the-counter, either, and that's why the pharmacist was confused. She admitted on the record that she didn't call and that she changed it, but it's being charged against Dr. Haj-Hamed as a violation of his consent agreement. Mr. Graff stated that he doesn't know of anyone anywhere who has ever been before the Board who would risk the loss of a license by prescribing Lomotil to someone. He stated that was absurd.

Mr. Graff stated that, because they had forgotten to ask the pharmacist about certain things, the State decided to bring in a surprise expert witness, Tim Benedict. Mr. Graff stated that that is specifically precluded by the Board's rules. All evidence and witnesses must be disclosed in a summary suspension hearing at least three days in advance. During lunch of the first day of the hearing, the State's representatives went down and got Mr. Benedict from his office and brought him up as an expert witness on that prescription. Mr. Graff stated that that's wrong and against the Board's rules. He stated that that can't stand. It presents great prejudice to his client.

Mr. Graff stated that he's not saying that this isn't a serious matter. What is before the Board is someone who failed to have appropriate supervision. There is evidence of that in the record. Mr. Graff stated that there was confusion about what should have happened. Terms were used in this consent agreement differently than they had been in other consent agreements. Mr. Graff asked that those who drafted the agreement tell them what the words were supposed to mean and how it was supposed to work, that there

would be a "supervising physician" – a term that is generally used for someone who oversees urine screens – to be "on-site," but to have no contact with the patients, no requirement to oversee the client's work, but only to do retrospective chart review, all of which the State agrees was done on 100% of the charts in fulfillment of the terms and conditions of the Consent Agreement.

Mr. Graff stated that he and Dr. Haj-Hamed don't try to downplay what the Board needs to do to protect the public, but what they have here is that the public was well-protected. There's not one instance where anyone is alleging that his client didn't adequately serve his patients. Clearly, this matter arose out of something in Kentucky that was a concern. The Board took an action. Dr. Haj-Hamed has resolved Kentucky, and he has his Kentucky license back. They have appropriately dealt with the issues in that state. Ohio now seeks to do something far beyond that which Kentucky did, not based on any action that happened in Ohio, but on the concerns of patient care that were raised in Kentucky, about which Kentucky said that Dr. Haj-Hamed is entitled to go back to work. Mr. Graff stated that this case involves more procedural problems than anything else.

Mr. Graff stated that this is the first time that the Board has ever handled a summary suspension in this manner, and it's difficult trying to figure out how to do them differently. There has been no change in the statute, case law, or in how the Board has done summary suspensions for the last 20 years that he's had the privilege to appear before the Board, and yet this one is being handled differently. Mr. Graff stated that that's a concern, and that's why they have raised so many procedural issues. Mr. Graff stated that he thinks that the Board needs to deal with Dr. Haj-Hamed fairly. He doesn't believe that the process that has taken Dr. Haj-Hamed out of practice for more than 257 days before he had the opportunity to address the concerns on the summary suspension, that according to the determination of the Secretary and Supervising Member was for the failure to pay renewal fees, should stand before the Board today as a preclusion from his practice.

Mr. Graff again stated that they have a concern, and he asked that the Board address their motions, take a look at the evidentiary rulings, and deal fairly with his client. Mr. Graff added that they also ask that the Board look to the protection of the public because here the public has been adequately protected. He also asked that the Board do it expeditiously.

Dr. Haj-Hamed thanked the Board for allowing him to appear before it today. He stated that, as Mr. Graff indicated, he is here because Kentucky took an action against his license. That's been resolved and he's practicing in Kentucky. He has an educational plan that he's following there.

Dr. Haj-Hamed stated that he was brought here because of alleged changes and the misapplication of his Consent Agreement. Dr. Haj-Hamed stated that he thinks he made mistakes on that, and he's fully responsible for making those mistakes on his consent agreement on the supervision part. He apologized for causing any problems for that. Dr. Haj-Hamed stated that he would like a second chance to resume his practice because he has many, many patients in Ohio who rely on him. He'd like to start taking care of them. He has been out of practice since April 2004, and he would like to go back to practice under the conditions the Board set forth for him. He promised he would apply them very well.

Dr. Davidson asked whether the Assistant Attorney General wished to respond.

Mr. Perry stated that he would, and would also like to discuss a couple of the preliminary matters. Mr. Perry stated that he believes that the motion he filed before the October meeting to go back and take evidence on the summary suspension issue was taken care of with the Remand Order. With regard to his second motion, he noted that the Report of Remand does find that the Secretary, the Supervising Member, and the Board did take the appropriate steps. They took the proper procedures under the statute. Mr. Perry stated that he's asking the Board to go one step further and find that they have not only followed the right steps, but also arrived at the correct decision. Mr. Perry stated that he explains that in his memorandum of support.

Mr. Perry stated that, with regard to Respondent's objections, he notes the fact that this case has taken 257 days to resolve. He stated that he wants to make certain that the Board has a clear understanding of why that's the case. On May 27, 2004 Respondent asked for hearings, and he stressed there was a plural request for hearings. On June 8, the Board was fully prepared and intended to give Dr. Haj-Hamed a hearing, not only on the summary suspension aspect, but on the merits and the facts as well. That morning Respondent's counsel walked in with an 18-page brief questioning the authority of the Hearing Examiner to even hear the summary suspension part of it. After some discussion, the Hearing Examiner took that under advisement, and they were fully prepared and intended to do that. Mr. Perry stated that Respondent asked for "hearings" and the State was going to give him one hearing that addressed both issues. Mr. Perry continued that at that time Respondent's counsel asked for a continuance, not because the patient records had been given to him the day before, but because he wanted to wait until the next week, when the Kentucky Board had met and he'd gotten what he anticipated to be a favorable decision that he could later use as evidence in front of this Board. The matter was continued until July 29.

Mr. Perry continued that, after two days of hearing, the matter was not concluded. Both he and the Hearing Examiner offered to come in a third day, a Saturday, to get this case concluded, but Respondent's counsel was not able to do that. The hearing was continued to August 13. It finally came before the Board on October 13. The Board remanded it to November 9. Mr. Perry stated that he would stress that that was a result of the Board's overruling the Hearing Examiner's original ruling that Respondent's counsel had invited her to make, that the hearing couldn't even address the issue of summary suspension. Now, after 257 days, Respondent is saying that he's being denied what he first asked for in the very beginning, what the Board was prepared to do on June 8.

Mr. Perry stated that, with regard to the evidence taken at the Remand hearing on November 9 regarding the determination by the Secretary and Supervising Member, Mr. Schmidt testified that they had an April 26 office conference, after which he met with the Secretary and Supervising Member and investigative Board staff. At that time, the Secretary and Supervising Member instructed them to go forward. That was their determination. Mr. Perry stated that there was no written determination because that is not required by the statute. What was admitted as State's Exhibit 17, as Mr. Schmidt testified, was an internal memo that merely memorialized that determination. There was absolutely no evidence in this case that

Respondent failed to pay his renewal fees. That was never even discussed. Throughout the investigation by Mr. Schmidt and Douglas Edwards, Supervisor Investigator, the April conference, the investigative staff meeting afterwards, the notice of opportunity, the Board's telephone conference, not once was the failure to pay license fees ever mentioned or discussed. Nobody ever gave a thought to it. Now the Board is being asked to believe that the Secretary and Supervising Member made this deliberate decision to falsely accuse this man of not paying renewal fees and then instructed the Board to go forward and take his license over something so innocuous. Mr. Perry advised that this was simply a typographical error.

Mr. Perry stated that at hearing Dr. Haj-Hamed testified that he's a Board-certified internist who doesn't need anybody looking over his shoulder. Their basic position is that the law does not require a useless gesture, so why hold Dr. Haj-Hamed to his consent agreement. He doesn't need it, nobody got hurt, so what's the problem? Mr. Perry referred to the attachments included with the objections filed for the initial Report and Recommendation. He stated that he had first considered objecting to their admission into the record, because he didn't think they were relevant, but they really are. They go right to Dr. Haj-Hamed's attitude. Dr. Haj-Hamed thinks that the Board is going to be so impressed that it will overlook the fact that he totally blew off his Ohio consent agreement. Dr. Haj-Hamed thinks that the Board should give him credit for his Kentucky reinstatement and overlook the facts. Mr. Perry stated that Dr. Haj-Hamed didn't misapply the consent agreement, he blew it off. He didn't even try to comply with it.

Mr. Perry stated that, as the Report and Recommendation points out, there is a pattern of conduct here by the Respondent. Half-truths or outright misrepresentations appear in his consent agreements. He knowingly signs them, failing to correct them at that point. He'll say that he understands his obligations, but then when he's caught, he'll say that he didn't understand. But then he'll ask, "What's the big deal? I don't really need somebody looking over my shoulder, nobody got hurt." Mr. Perry stated that Dr. Haj-Hamed just doesn't get it. The public harm here is that the Board is dealing with a person who does not believe that he's accountable to the Board. Mr. Perry stated that he can't be any more serious than that. Dr. Haj-Hamed simply doesn't recognize the authority of this Board to regulate his practice.

Mr. Perry continued that, as the Hearing Examiner pointed out, Dr. Haj-Hamed simply cannot be effectively regulated by this Board. For that reason, he asked that the Board adopt the Report and Recommendation and permanently revoke Dr. Haj-Hamed's license in Ohio.

Mr. Dilling stated that just before this meeting, Mr. Graff informed him that he had filed a motion on behalf of Dr. Haj-Hamed for review of procedural and evidentiary rulings of the Hearing Examiner on the summary suspension and administrative hearing of Dr. Haj-Hamed. The Attorney General's office has not had an opportunity to address this motion in writing prior to the meeting today. At this time, he asked that the Board be given the opportunity to read Mr. Graff's motion, to allow Mr. Perry to respond to the motion, and then to consider the motion filed on behalf of Dr. Haj-Hamed.

At this time, Dr. Davidson gave the Board several minutes to review the motion filed by Mr. Graff. After Board members indicated that they had had adequate time to read the motion, Dr. Davidson asked whether Mr. Perry wished to respond to the motion.

Mr. Perry stated that the matters raised in the motion were raised during the hearing. He believes that the Hearing Examiner ruled correctly on these evidentiary issues.

Dr. Steinbergh asked whether the appropriate motion would be a motion to accept or deny the motion for review.

Mr. Dilling stated that the motion filed by Mr. Graff has three parts. The Board can take it in whole or in part. An appropriate motion would be to approve or deny each part individually, or to do so in whole.

Dr. Egner stated that this motion doesn't come from the Board.

Mr. Dilling agreed that it doesn't. The motion comes from Dr. Haj-Hamed's counsel, who has requested the Board to consider this motion pursuant to the hearing rules.

Dr. Egner stated that the Board ordinarily needs a motion to say whether or not the Board will consider.

Mr. Dilling stated that this is a procedural matter, and recommended that the Board consider the motion.

Dr. Steinbergh indicated that the Board should consider the State's motion to ratify the determination made by the Secretary and Supervising Member.

Mr. Dilling asked that the Board first consider the motion filed by Mr. Graff today. He stated that the other matter will be addressed. He noted that the Board members can break Mr. Graff's motion down in any way they wish. Mr. Graff has included three issues within his motion.

Dr. Kumar asked for clarification from the Attorney General on the expert witness issue.

Mr. Perry stated that this was one of those situations that came up as a result of something that came out on the stand. When the pharmacist was testifying, she was asked questions on cross examination about whether she believed that this was intended to be a prescription or whether it was something else. The State then called Mr. Benedict, who is a pharmacist, as well as Assistant Executive Director of the Pharmacy Board, who testified on the very limited factual issue of whether the medication is a controlled substance, available over the counter, what dosage is it commonly prescribed in, and, finally, what the little symbols mean on the prescription form. The State wanted to get that into the record to show that this was written on a prescription pad, it names a controlled substance, includes the proper dosage for that particular controlled substance as opposed to any over the counter drug, and the symbols are consistent with how you would prescribe that particular substance. The State called Mr. Benedict for that specific factual issue, which had not been something that the State had anticipated being an issue at hearing. When that was argued before the Hearing Examiner, since this issue had just kind of sprung to life, she allowed the State to call a witness that was not on the witness list with very little notice to address that specific issue. It wasn't the typical expert situation where someone is given a file and asked to review it and make a written

explanation.

Dr. Davidson asked whether that answered Dr. Kumar's question.

Dr. Kumar indicated that it did.

Dr. Davidson asked whether there were any other procedural questions or comments on the motion.

Mr. Dilling again asked that the Board first address the three parts of Mr. Graff's motion.

Dr. Steinbergh asked for clarification of the three parts.

Mr. Dilling stated that: 1. Mr. Graff objects to the use of a surprise witness by the State; 2. Respondent also requests the Board to review the notice of summary suspension adopted against the Respondent; and 3. He objects to the failure of the Hearing Examiner to allow subpoenas for the testimony of the Secretary, Supervising Member, and Assistant Attorney General Albers.

Dr. Kumar stated that he very clearly remembers when this was discussed over the telephone conference. The matter of non-payment of dues didn't enter into the discussion. When he voted for the summary suspension at that time, the issue was not the non-payment of dues at all. It was for the fact that Dr. Haj-Hamed did not abide by the terms of the Consent Agreement. The summary suspension was strictly on that process. Dr. Kumar stated that the reference to (B)(16) in the memorandum in question was merely a typographical error.

DR. KUMAR MOVED TO DENY MR. GRAFF'S MOTION TO REVIEW THE NOTICE OF SUMMARY SUSPENSION ADOPTED AGAINST THE RESPONDENT. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

Vote:		
	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Steinbergh	- aye

The motion carried.

Dr. Steinbergh stated that she would address part 1 of Mr. Graff's motion, concerning calling Mr. Benedict as an expert witness. She stated that she's not a procedural attorney, but that was not something considered

as summary suspension. The Board summarily suspended Dr. Haj-Hamed because he violated his consent agreement and was practicing without appropriate supervision. For the State to call an expert such as Mr. Benedict to explain this piece of information seems reasonable. Also it was not part of the summary suspension and was not at all a discussion in regards to permanent revocation of his license.

Mr. Dilling stated that Mr. Benedict was a factual witness and was offered in relation to the hearings before the Board. As he reads Mr. Graff's motion, Mr. Graff would like the Board to say that Mr. Benedict's testimony shouldn't have been entered into evidence and the Board shouldn't be considering it today. The motion would be to either accept Mr. Graff's contention and take that testimony out of the evidence, or to reject that motion and move on.

Dr. Kumar stated that, as Mr. Dilling pointed out, the discussion was essentially on the basis of non-compliance with the consent agreement. The issue of prescriptions and so and so forth was not effective. He stated that he doesn't think the State's case changes if it deletes the references to the prescription. That was not part of the discussion. Dr. Kumar asked whether it would be prudent to delete that reference?

Mr. Dilling stated that the Assistant Attorney General has advised that he does not see any basis for this motion and this objection.

DR. STEINBERGH MOVED TO REJECT MR. GRAFF'S OBJECTION TO THE USE OF A SURPRISE WITNESS BY THE STATE. DR. BUCHAN SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- abstain
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Steinbergh	- aye

The motion carried.

DR. KUMAR MOVED TO DENY MR. GRAFF'S MOTION TO OVERTURN THE FAILURE OF THE HEARING EXAMINER TO ALLOW SUBPOENAS FOR THE TESTIMONY OF THE SECRETARY, SUPERVISING MEMBER, AND ASSISTANT ATTORNEY GENERAL ALBERS.

Dr. Kumar stated that he seriously doesn't see any reason to have the testimony of the Secretary and Supervising Member and Ms. Albers in the hearing. He doesn't think it would change anything.

DR. STEINBERGH SECONDED THE MOTION.

Dr. Bhati noted that Dr. Haj-Hamed is a graduate of Good Samaritan Hospital, and he might have run across Dr. Haj-Hamed at the hospital during his training. He added that he can't recall having any serious conversation with Dr. Haj-Hamed at any time.

A vote was taken on Dr. Kumar's motion:

Vote:		
	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Steinbergh	- aye

The motion carried.

Dr. Davidson advised that Assistant Attorney General Perry has filed a motion for an order ratifying the determination of the Secretary and Supervising Member that there was clear and convincing evidence that Dr. Haj-Hamed had violated the terms of his Consent Agreement, and, therefore, his continued practice of medicine constituted a danger of immediate and serious harm to the public, as provided in the Consent Agreement. She noted that Dr. Haj-Hamed filed a response, which was faxed to Board members the previous day. She asked that Board members who did not receive a copy of that response, indicate by raising their hands, advising that staff would distribute the response to those who did not get it, and those individuals would be given a few moments to read it.

All members indicated that they had received the response.

DR. ROBBINS MOVED TO APPROVE AND CONFIRM MS. CLOVIS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF GHASSAN HAJ-HAMED, M.D. MS. SLOAN SECONDED THE MOTION.

Dr. Davidson stated that she would now entertain discussion concerning the Proposed Findings of Fact and Conclusions of the Report of Remand, and the Motion for an Order of Ratification in the Matter of Dr. Haj-Hamed. She stated that she would like to begin the discussion by addressing the Motion filed by the State and the Response filed on behalf of Dr. Haj-Hamed.

Dr. Kumar stated that the facts were clear in this case that the Secretary and Supervising Member acted appropriately in determining that there was clear and convincing evidence that Dr. Haj-Hamed violated the

terms of his Consent Agreement.

DR. KUMAR MOVED TO AMEND THE FINDINGS OF FACT BY ADDING FINDINGS THAT:

1. **THE SECRETARY AND SUPERVISING MEMBER, AT THE TIME THEY MADE THE RECOMMENDATION TO SUMMARILY SUSPEND THE LICENSE OF DR. HAJ-HAMED, HAD CLEAR AND CONVINCING EVIDENCE THAT DR. HAJ-HAMED HAD VIOLATED THE TERMS OF HIS CONSENT AGREEMENT, AND,**

2. **THEREFORE, HIS CONTINUED PRACTICE OF MEDICINE CONSTITUTED A DANGER OF IMMEDIATE AND SERIOUS HARM TO THE PUBLIC, AS PROVIDED IN THE CONSENT AGREEMENT.**

DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

Vote:		
	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Steinbergh	- aye
	Dr. Davidson	- aye

The motion carried.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. CLOVIS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF GHASSAN HAJ-HAMED, M.D. MS. SLOAN SECONDED THE MOTION.

Dr. Davidson stated that she would now entertain further discussion in the above matter.

Dr. Egner stated that she would like some discussion on this case. She stated that she believes that the evidence presented to the Board was very clear. Dr. Haj-Hamed did not abide by the terms of his Consent Agreement in a very substantial way. It was very clear in that Agreement that Dr. Haj-Hamed was to have on-site supervision, and he was not to be writing prescriptions for scheduled drugs. He violated his Consent Agreement in the most substantial way that the Consent Agreement was put forth to him. Dr. Egner stated that she agrees that it is not a lack of understanding on Dr. Haj-Hamed's part, but it's a lack of being able to be monitored and follow the rules of the Board. The Board hasn't seen anything that would lead the Board to think otherwise. Dr. Egner stated that she is very much in support of this Report

and Recommendation. It is appropriate.

Dr. Garg joined the meeting at this time.

Dr. Steinbergh agreed with Dr. Egner, and she stated that she would also like to address the issue Mr. Graff raised concerning the roles of the supervising and monitoring physicians. She stated that the language in this case may be different from others where separate supervisors and separate monitors were in place, but in this case, Dr. Sultan was responsible for the total supervising and monitoring of Dr. Haj-Hamed and his medical practice. That means that, without question, Dr. Sultan had to monitor, had to supervise, and had to be present when Dr. Haj-Hamed was practicing. The Board is concerned about the cases where Dr. Haj-Hamed has been without that supervision.

Dr. Kumar stated that he can see the severity of the thing that was done and the lightness with which the Board's Consent Agreement was taken by Dr. Haj-Hamed, and that bothers him. At the same time, he has extreme difficulty in permanently revoking. Could Dr. Haj-Hamed be apologetic? Is it possible? Dr. Kumar stated that he's tossing and turning on that. Can Dr. Haj-Hamed be rehabilitated? Dr. Kumar stated that he's not sure.

Dr. Buchan stated that now that the Board has peeled back all of the procedural layers and is back to the basic Report and Recommendation, in response to Dr. Kumar's thoughts, he believes that the Proposed Order, as written, is appropriate. He doesn't think that this is a fellow who possesses an attitude that is amenable to correction. What he read and appreciated is Dr. Haj-Hamed's total, absolute, flagrant disregard for the Consent Agreement that he had signed. Dr. Buchan stated that he's grateful that the Board has peeled this back to the simple question of whether this physician is reasonably licensed in the State of Ohio, and his response to that is, "no."

Dr. Egner stated that she always looks at these cases and questions how a reasonable person would react. In the midst of this, here was Dr. Haj-Hamed who had serious allegations brought against him by two state medical boards. He certainly was well aware of how serious both medical boards took their allegations, and he had been through the process. He knew many of the Board staff. He had a qualified attorney. If he had questions as to what things meant, he had so many avenues to check that out and make sure that he was really following it, because he would have known through the process how important it was to follow that Consent Agreement. He did not take advantage of any of those avenues. His questions could have been very clearly answered. This is not ambiguous language, it was very clear.

A vote was taken:

Vote:		
	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- aye
	Dr. Buchan	- aye

Dr. Kumar	- aye
Ms. Sloan	- aye
Dr. Robbins	- aye
Dr. Garg	- abstain
Dr. Steinbergh	- aye

The motion carried.

State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.state.oh.us/med/

April 29, 2004

Ghassan Haj-Hamed, M.D.
4056 Clifton Ridge
Cincinnati, Ohio 45220

Dear Doctor Haj-Hamed:

Enclosed please find certified copies of the Entry of Order, the Notice of Summary Suspension and Opportunity for Hearing, and the Motion by the State Medical Board of Ohio made at a conference call on April 29, 2004, scheduled pursuant to Section 4731.22(G), Ohio Revised Code, adopting the Order of Summary Suspension and issuing the Notice of Summary Suspension and Opportunity for Hearing.

You are advised that continued practice after receipt of this Order shall be considered practicing without a certificate, in violation of Section 4731.41, Ohio Revised Code.

Pursuant to Chapter 119, Ohio Revised Code, you are hereby advised that you are entitled to a hearing on the matters set forth in the Notice of Summary Suspension and Opportunity for Hearing. If you wish to request such hearing, that request must be made in writing and be received in the offices of the State Medical Board within thirty days of the time of mailing of this notice. Further information concerning such hearing is contained within the Notice of Summary Suspension and Opportunity for Hearing.

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage, M.D.

Lance A. Talmage, M.D.,
Secretary

LAT:cw
Enclosures

Mailed 4/30/04

CERTIFICATION

I hereby certify that the attached copies of the Entry of Order of the State Medical Board of Ohio and the Motion by the State Medical Board, in a conference call on April 29, 2004, scheduled pursuant to Section 4731.22(G), Ohio Reviewed Code, to Adopt the Order of Summary Suspension and to Issue the Notice of Summary Suspension and Opportunity for Hearing, constitute true and complete copies of the Motion and Order as they appear in the Journal of the State Medical Board of Ohio.

This certification is made under the authority of the State Medical Board of Ohio and in its behalf.

Lance A. Talmage, M.D.

Lance A. Talmage, M.D., Secretary

(SEAL)

April 29, 2004

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF :

:

GHASSAN HAJ-HAMED, M.D.

:

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 29th day of April 2004.

Pursuant to Section 4731.22(G), Ohio Revised Code, and upon recommendation of Lance A. Talmage, M.D., Secretary, and Raymond J. Albert, Supervising Member; and

Pursuant to their determination that there is clear and convincing evidence that Ghassan Haj-Hamed, M.D., has violated Section 4731.22(B)(15), Ohio Revised Code, as alleged in the Notice of Summary Suspension and Opportunity for Hearing which is enclosed herewith and fully incorporated herein, which determination is based upon review of information received pursuant to an investigation; and

Pursuant to their further determination that Dr. Haj-Hamed's continued practice presents a danger of immediate and serious harm to the public;

The following Order is hereby entered on the Journal of the State Medical Board of Ohio for the 29th day of April 2004;

> It is hereby ORDERED that the certificate of Ghassan Haj-Hamed, M.D., to practice medicine and surgery in the State of Ohio be summarily suspended.
>
> It is hereby ORDERED that Ghassan Haj-Hamed, M.D., shall immediately close all his medical offices and immediately refer all active patients to other appropriate physicians.

This Order shall become effective immediately.

Lance A. Talmage, M.D.

Lance A. Talmage, M.D., Secretary

(SEAL)

April 29, 2004

Date

State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.state.oh.us/med/

NOTICE OF SUMMARY SUSPENSION
AND
OPPORTUNITY FOR HEARING

April 29, 2004

Ghassan Haj-Hamed, M.D.
4056 Clifton Ridge
Cincinnati, Ohio 45220

Dear Doctor Haj-Hamed:

The Secretary and the Supervising Member of the State Medical Board of Ohio [Board] have determined that there is clear and convincing evidence that you have violated Section 4731.22(B)(15), Ohio Revised Code, and have further determined that, pursuant to the terms of your November 14, 2003 Consent Agreement with the State Medical Board of Ohio, your continued practice presents a danger of immediate and serious harm to the public. Such determinations were made upon review of the following information:

(1) You hold an active certificate to practice medicine and surgery in the State of Ohio, subject to the probationary terms, conditions and limitations of the Consent Agreement into which you entered with the Board effective on or about November 14, 2003, (Consent Agreement), a copy of which is attached hereto. In the above Consent Agreement, you agreed that:

(a) You shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio.

(b) You will limit your practice to your employment at Tri-State Urgent Care.

(c) Your practice at Tri-State Urgent Care "shall be supervised and monitored on site at all times by Tariq Sultan, M.D." (Doctor Sultan).

(d) You will make your patient records available for review by an agent of the Board upon request.

(e) You will not administer, dispense, prescribe or personally furnish any controlled substance as defined by state or federal law.

You further agreed as follows:

> If the Secretary and Supervising Member of the Ohio Board determine that there is clear and convincing evidence that Dr. Haj-Hamed has violated any term, condition or limitation of this Consent Agreement, Dr. Haj-Hamed agrees that the violation, as alleged, also constitutes clear and convincing evidence that his continued practice presents a danger of immediate and serious harm to the public for purposes of initiating a summary suspension pursuant to Section 4731.22(B), Ohio Revised Code.

(2) During an interview by Board staff on April 26, 2004, Doctor Sultan stated that he supervises you on site on Mondays and occasional Fridays only, and only at the West Chester office of Tri-State Urgent Care. Doctor Sultan further stated that he periodically goes to the Oakley office of Tri-State Urgent Care to review and sign patient records relating to patients you treated at the Oakley office.

(3) On April 26, 2004, at the West Chester, Ohio, office of Tri-State Urgent Care, an agent of the Board requested to review your patient records. Despite this request, you, through your attorney, Douglas Graff, failed to permit the Board's agents to inspect patient records at that time.

(4) At an investigatory conference on April 27, 2004, you admitted to Board representatives that, subsequent to the effective date of the Consent Agreement, you have rendered care to patients at times when Doctor Sultan was not providing you on site supervision.

(5) On or about the dates listed below, during times when Doctor Sultan stated he was not on site to supervise, you issued prescriptions to the patients identified in the attached Patient Key (Key confidential—to be withheld from public disclosure).

Patient 1	Tuesday	2-10-04
	Thursday	4-22-04
Patient 2	Saturday	3-6-04
Patient 3	Thursday	3-18-04
Patient 4	Thursday	3-25-04
Patient 5	Tuesday	4-13-04
Patient 6	Thursday	4-15-04

(6) On February 9, 2004, you stated at an office conference that your Drug Enforcement Administration (D.E.A.) certificate had expired on October 15, 2003 and that you did not renew it. By prescription issued on Tuesday, February 10, 2004, at which time you did not hold a valid D.E.A. certificate of registration, you prescribed to Patient 1, identified

in the attached Patient Key, Lomotil 2.5 mg., a controlled substance under both state and federal law. (Key confidential—to be withheld from public disclosure).

Therefore, pursuant to Section 4731.22(G), Ohio Revised Code, and upon recommendation of Lance A. Talmage, M.D., Secretary, and Raymond J. Albert, Supervising Member, you are hereby notified that, as set forth in the attached Entry of Order, your certificate to practice medicine and surgery in the State of Ohio is summarily suspended.

Furthermore, in accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery, or to reprimand you or place you on probation for one or more of the following reasons:

(A) On or about November 14, 2003, you entered into a Consent Agreement with the Board whereby your license to practice medicine and surgery in Ohio was reinstated, subject to certain probationary terms, conditions and limitations. A copy of the Consent Agreement is attached hereto and incorporated herein.

(B) Paragraph 1 of this Consent Agreement states: "Dr. Haj-Hamed shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio." Despite this provision, on or about February 10, 2004, you prescribed to Patient 1, Lomotil 2.5 mg, a schedule 5 controlled substance under both state and federal law (attached Patient Key Confidential—to be withheld from the public), although, at that time, you did not hold a valid D.E.A. registration to prescribe controlled substances.

(C) Paragraph 2 of this Consent Agreement states: "Dr. Haj-Hamed shall not administer, dispense, prescribe or personally furnish any controlled substances as defined by state or federal law. Despite this provision, on or about February 10, 2004, you prescribed to Patient 1, Lomotil 2.5 mg, a controlled substance under both state and federal law (attached Patient Key Confidential—to be withheld from the public).

(D) Further, Paragraph 2 of this Consent Agreement states: "Dr. Haj-Hamed shall make his patient records available for review by an agent of the Ohio Board upon request." On or about April 26, 2004, at the West Chester, Ohio, office of Tri-State Urgent Care, an agent of the Ohio Board requested you make your patient records available for review under this provision. Through your attorney, Douglas E. Graff, you declined to make your patient records available for review by the agent of the Ohio Board

(E) Paragraph 3 of the Consent Agreement states:

* * *

1. Dr. Haj-Hamed agrees to limit his practice to his employment at Tri-State Urgent Care in Cincinnati, Ohio. He further agrees that his practice at Tri-State Urgent Care shall be supervised and monitored on site at all times by Tariq Sultan, M.D. (Dr. Sultan), who is board certified in Internal Medicine. * * *

   Dr. Sultan shall supervise and monitor Dr. Haj-Hamed and his medical practice, and shall review 100% of Dr. Haj-Hamed's patient charts. * * *

* * *

Despite this provision, you have been practicing when your supervising and monitoring physician, Dr. Sultan, was not on site.

Further, on or about the dates listed below, during times when Doctor Sultan stated he was not on site to supervise, you issued prescriptions to the patients identified in the attached Patient Key (Key confidential—to be withheld from public disclosure), as follows:

Patient 1	Tuesday	2-10-04
	Thursday	4-22-04
Patient 2	Saturday	3-6-04
Patient 3	Thursday	3-18-04
Patient 4	Thursday	3-25-04
Patient 5	Tuesday	4-13-04
Patient 6	Thursday	4-15-04

Your acts, conduct, and/or omissions as alleged in paragraphs (B) through (E) above, individually and/or collectively, constitute a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, and Chapter 4731., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty days of the time of mailing of this notice.

You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand you or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,

Lance A. Talmage, M.D.

Lance A. Talmage, M.D.
Secretary

LAT:jag
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5148 3657
RETURN RECEIPT REQUESTED

Tri-State Urgent Care
5002 Ridge Avenue
Cincinnati, Ohio 45220

CERTIFIED MAIL # 7000 0600 0024 5148 3640
RETURN RECEIPT REQUESTED

Douglas E. Graff, Esq.
Graff & Associates, L.P.A.
604 East Rich Street
Columbus, Ohio 43215-5341

CERTIFIED MAIL # 7000 0600 0024 5148 3633

RETURN RECEIPT REQUESTED

Suzanne E. Kelly, Esq.
Karr & Sherman, L.P.A.
One Easton Oval, Suite 550
Columbus, Ohio 43219

CERTIFIED MAIL # 7000 0600 0024 5148 3619
RETURN RECEIPT REQUESTED

State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.state.oh.us/med/

EXCERPT FROM TELECONFERENCE OF APRIL 29, 2004

CONFERENCE CALL OF APRIL 29, 2004 TO CONSIDER THE SUMMARY SUSPENSION OF A CERTIFICATE

GHASSAN HAJ-HAMED, M.D. - ORDER OF SUMMARY SUSPENSION AND NOTICE OF OPPORTUNITY FOR HEARING

.....

MR. BROWNING MOVED TO ENTER AN ORDER OF SUMMARY SUSPENSION IN THE MATTER OF GHASSAN HAJ-HAMED, M.D., IN ACCORDANCE WITH SECTION 4731.22(G), OHIO REVISED CODE, AND TO ISSUE THE NOTICE OF SUMMARY SUSPENSION AND OPPORTUNITY FOR HEARING TO DR. HAJ-HAMED. DR. BHATI SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye

The motion carried.

Ms. Sloan asked Dr. Talmage whether he authorized staff to affix his electronic signature to the order of summary suspension, notice of opportunity for hearing, certification and cover letter in the matter of Ghassan Haj-Hamed, M.D., in his absence from Ohio.

Dr. Talmage responded that he does give his authorization.

CONSENT AGREEMENT
BETWEEN
GHASSAN HAJ-HAMED, M.D.
AND
THE STATE MEDICAL BOARD OF OHIO

This Consent Agreement is entered into by and between Ghassan Haj-Hamed, M.D., and the State Medical Board of Ohio (Ohio Board), a state agency charged with enforcing R.C. Chapter 4731.

Dr. Haj-Hamed enters into this Consent Agreement being fully informed of his rights including the right to representation by counsel and the right to pursue his appeal rights on the issues considered herein.

BASIS FOR ACTION

This Consent Agreement is entered into on the basis of the following stipulations, admissions and understandings:

A. The Ohio Board is empowered by R.C. 4731.22(B), to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for any of the enumerated violations.

B. Dr. Haj-Hamed is licensed to practice medicine and surgery in the State of Ohio, License # 35-069745.

C. Dr. Haj-Hamed states that he also holds a license to practice medicine and surgery in the State of Kentucky.

D. Dr. Haj-Hamed admits that his license to practice medicine and surgery in Kentucky was suspended by Emergency Order of the Kentucky Board of Medical Licensure (Kentucky Board) on February 7, 2003, as set forth in the Notice of Opportunity for Hearing issued by the Ohio Board on March 12, 2003. Dr. Haj-Hamed requested a hearing on the allegations in that notice letter. Dr. Haj-Hamed further admits that the Ohio Board dismissed that Notice of Opportunity for Hearing by Order and Entry dated May 14, 2003. Dr. Haj-Hamed filed an appeal of that Order and Entry in the Franklin County Court of Common Pleas, Case No. 03CVF-07-8068 on July 22, 2003. The May 14, 2003 Order and Entry and Notice of Appeal are attached hereto and incorporated herein as Exhibit A.

E. Dr. Haj-Hamed further admits a new Notice of Opportunity for Hearing was issued by the Ohio Board on May 14, 2003. The May 14, 2003, Notice of Opportunity for Hearing was based upon an April 22, 2003 Amended Emergency Order of Suspension issued by the Kentucky Board and a Final Order Affirming the Amended Emergency Order of Suspension issued by the Kentucky Board dated May 9, 2003. Dr. Haj-Hamed admits that he failed to timely request a hearing on the May 14, 2003 Notice of Opportunity for Hearing. Dr. Haj-Hamed further admits the Ohio Board entered a Final Order and Journal Entry on July 9,

2003, suspending his Ohio license indefinitely. Dr. Haj-Hamed has appealed the July 9, 2003 Final Order and Journal Entry to the Franklin County Court of Common Pleas, Case No. 03-CVF-07-8067. The July 9, 2003 Final Order and Journal Entry and Notice of Appeal are attached hereto and incorporated herein as Exhibit B.

F. Dr. Haj-Hamed and the Ohio Board desire to resolve the claims and differences with respect to the above appeals by entering into the attached Settlement Agreement and this Consent Agreement. The Ohio Board expressly reserves the right to institute additional formal proceedings based upon any other violations of R.C. Chapter 4731., whether occurring before or after the effective date of this Consent Agreement.

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, the certificate of Dr. Haj-Hamed to practice medicine and surgery in the State of Ohio shall be reinstated, and Dr. Haj-Hamed knowingly and voluntarily agrees with the Ohio Board to the following PROBATIONARY terms, conditions and limitations:

PROBATIONARY TERMS, CONDITIONS AND LIMITATIONS

1. Dr. Haj-Hamed shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.

Controlled Substance Restriction

2. Dr. Haj-Hamed shall not administer, dispense, prescribe or personally furnish any controlled substances as defined by state or federal law. Further, Dr. Haj-Hamed shall make his patient records available for review by an agent of the Ohio Board upon request.

Practice Limitation and Supervising and Monitoring Physician

3. Dr. Haj-Hamed agrees to limit his practice to his employment at Tri-State Urgent Care in Cincinnati, Ohio. He further agrees that his practice at Tri-State Urgent Care shall be supervised and monitored on site at all times by Tariq Sultan, M.D., who is board certified in Internal Medicine. Dr Haj-Hamed further states that he is Dr. Sultan's employee and has no financial relationship with Dr. Sultan other than as an employee to his employer, Dr. Sultan.

   Dr. Sultan shall supervise and monitor Dr. Haj-Hamed and his medical practice, and shall review 100% of Dr. Haj-Hamed's patient charts.

   Further, Dr. Sultan shall provide the Ohio Board with reports on the supervision and monitoring of Dr. Haj-Hamed and his medical practice, and on the review of Dr. Haj-Hamed's patient charts. Dr. Haj-Hamed shall ensure that the reports are

forwarded to the Ohio Board on a quarterly basis and are received in the Ohio Board's offices no later than the due date for Dr. Haj-Hamed's quarterly declaration.

In the event Dr. Sultan believes that Dr. Haj-Hamed has engaged in conduct or behavior that violates the standard of care, he shall immediately report to the Ohio Board the information on which that belief is based.

In the event that Dr. Sultan becomes unable or unwilling to serve in this capacity, Dr. Haj-Hamed must immediately suspend practice and notify the Ohio Board in writing. In addition, Dr. Haj-Hamed shall seek prior Ohio Board approval of another supervising and monitoring physician before resuming practice. Furthermore, Dr. Haj-Hamed shall ensure that Dr. Sultan also notifies the Ohio Board directly of his inability to continue to serve and the reasons therefore.

4. Dr. Haj-Hamed shall submit quarterly declarations under penalty of Ohio Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Ohio Board's offices on the first day of the third month following the month in which this Consent Agreement becomes effective. Subsequent quarterly declarations must be received in the Ohio Board's offices on or before the first day of every third month.

5. Dr. Haj-Hamed shall appear in person for an interview before the full Ohio Board or its designated representative during the third month following the effective date of this Consent Agreement. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Ohio Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

6. In the event that Dr. Haj-Hamed should leave Ohio for three continuous months, or reside or practice outside the State, Dr. Haj-Hamed must notify the Ohio Board in writing of the dates of departure and return.

Notification of Action Taken By Another State

7. Dr. Haj-Hamed shall immediately notify the Ohio Board of any action taken against a certificate to practice held by him in any other state. Moreover, Dr. Haj-Hamed shall provide certified copies of all documentation verifying the other state board's action within sixty days of its occurrence.

Required Reporting by Licensee

8. Within thirty days of the effective date of this Consent Agreement, Dr. Haj-Hamed shall provide a copy of this Consent Agreement to Tri-State Urgent Care and to any entities with which he contracts to provide health care services. Although Dr. Haj-Hamed's practice in Ohio is limited to his employment at Tri-

State Urgent Care, he shall provide a copy of this Consent Agreement to the Chief of Staff at each hospital where he has privileges or appointments.

9. Within thirty days of the effective date of this Consent Agreement, Dr. Haj-Hamed shall provide a copy of this Consent Agreement by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he holds any professional license, whether active or inactive. Dr. Haj-Hamed further agrees to provide a copy of this Consent Agreement by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or for reinstatement of any professional license. Further, Dr. Haj-Hamed shall provide the Ohio Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Ohio Board, Dr. Haj-Hamed appears to have violated or breached any term or condition of this Consent Agreement, the Ohio Board reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including, but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this Consent Agreement.

If the Secretary and Supervising Member of the Ohio Board determine that there is clear and convincing evidence that Dr. Haj-Hamed has violated any term, condition or limitation of this Consent Agreement, Dr. Haj-Hamed agrees that the violation, as alleged, also constitutes clear and convincing evidence that his continued practice presents a danger of immediate and serious harm to the public for purposes of initiating a summary suspension pursuant to R.C. 4731.22(G).

DURATION AND MODIFICATION OF TERMS

The duration of this Consent Agreement shall not be contingent upon any determination by the Kentucky Board to reinstate Dr. Haj-Hamed's Kentucky license from the suspended status imposed by its February 7, 2003 Emergency Order of Suspension, April 22, 2003 Amended Emergency Order of Suspension and Final Order Affirming the Amended Emergency Order of Suspension dated May 9, 2003. This Consent Agreement shall remain in effect until either of the following occurs:

A. A final resolution on the merits of the matter currently pending before the Kentucky Board is reached and, based upon that resolution, the Ohio Board enters a Final Order following issuance of a notice of opportunity for hearing;

B. The Ohio Board determines, after a final resolution of the pending Kentucky Board action, that no further action is warranted and notifies Dr. Haj-Hamed of that determination in writing.

Dr. Haj-Hamed shall not seek modification of the terms, conditions and limitations of this Consent Agreement.

ACKNOWLEDGMENTS/LIABILITY RELEASE

Dr. Haj-Hamed acknowledges that he has had an opportunity to ask questions concerning the terms of this Consent Agreement and that all questions asked have been answered in a satisfactory manner.

Any action initiated by the Ohio Board based on alleged violations of this Consent Agreement shall comply with the Administrative Procedure Act, R.C. Chapter 119. Dr. Haj-Hamed hereby releases the Ohio Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

This Consent Agreement shall be considered a public record as that term is used in R.C. 149.43 and may be reported to appropriate organizations, data banks, and governmental bodies. Dr. Haj-Hamed agrees to provide his social security number to the Ohio Board and hereby authorizes the Ohio Board to utilize that number in conjunction with that reporting.

EFFECTIVE DATE

It is expressly understood that this Consent Agreement is subject to ratification by the Ohio Board prior to signature by the Secretary and Supervising Member and shall become effective upon the last date of signature below.

GHASSAN HAJ-HAMED, M.D.

11.1.03
DATE

SUZANNE E. KELLY
Attorney for Dr. Haj-Hamed

11-1-03
DATE

MD
LANCE A. TALMAGE, M.D.
Secretary

11-13-03
DATE

Raymond J. Albert
RAYMOND J. ALBERT
Supervising Member

11/14/03
DATE

REBECCA J. ALBERS
Assistant Attorney General

11/13/03
DATE

SETTLEMENT AGREEMENT
BETWEEN
GHASSAN HAJ-HAMED, M.D.
AND
THE STATE MEDICAL BOARD OF OHIO

This Settlement Agreement is entered into by and between Ghassan Haj-Hamed, M.D. (Dr. Haj-Hamed), and the State Medical Board of Ohio (Ohio Board), the agency of the State of Ohio charged with enforcing Chapter 4731 of the Ohio Revised Code.

This Settlement Agreement is entered into on the basis of the following stipulations, statements, and understandings:

A. The Kentucky Board of Medical Licensure (Kentucky Board) suspended Dr. Haj-Hamed's license to practice medicine by Emergency Order on February 7, 2003. The Ohio Board issued Dr. Haj-Hamed a Notice of Opportunity for Hearing letter on March 12, 2003, based upon the Kentucky Board Emergency Order. Dr. Haj-Hamed requested a hearing on the allegations contained in the Notice of Opportunity for Hearing letter. The Ohio Board dismissed that Notice of Opportunity for Letter by Order and Entry on May 14, 2003. Dr. Haj-Hamed appealed that Entry and Order to the Franklin County Common Pleas Court, Case No. 03CVF-07-8068. The Order and Entry and Notice of Appeal are attached hereto and incorporated herein as Exhibit A.

B. The Ohio Board issued Dr. Haj-Hamed a new Notice of Opportunity for Hearing letter on May 14, 2003, based upon an April 22, 2003, Amended Emergency Order of Suspension and a Final Order Affirming the Amended Order of Emergency Suspension dated May 9, 2003, issued by the Kentucky Board. Dr. Haj-Hamed failed to timely request a hearing on the May 14, 2003, Notice of Opportunity for Hearing. The Ohio Board issued a Final Order and Journal Entry on July 9, 2003, suspending Dr. Haj-Hamed's license indefinitely. Pursuant to R.C. 119.12, Dr. Haj-Hamed timely appealed that Final Order and Journal Entry to the Franklin County Common Pleas Court, Case No. 03CVF-07-8067. The Final Order and Journal Entry and Notice of Appeal are attached hereto and incorporated herein as Exhibit B.

C. Dr. Haj-Hamed and the Ohio Board (collectively, the "Parties") desire to completely and finally settle all claims and differences with respect to the above administrative proceedings and appeals by entering the attached Consent Agreement.

Therefore, in consideration of the mutual covenants and promises contained herein, Ghassan Haj-Hamed, M.D. and the State Medical Board of Ohio agree as follows:

1. Upon execution of this Settlement Agreement, the Parties shall file joint motions in the Franklin County Common Pleas Court in Case No. 03 – CVF-07-8067 and Case No. 03-CVF-07-8068, seeking the remand of the appeals to the State Medical Board, in the form attached hereto as Exhibit C.

2. Upon entry by the Court of the Agreed Entries of Remand, the Board shall ratify the Consent Agreement in the form attached hereto as Exhibit D, the ratification of said Consent Agreement being of the essence of this agreement and, thus, the failure of the State Medical Board to enter such Consent Agreement would render said agreement null and void and would allow Dr. Haj-Hamed to proceed in the Franklin County Court of Common Pleas as previously.

3. Dr. Haj-Hamed hereby releases and forever discharges the State Medical Board, its members, employees, agents, officers and representatives, jointly and severally, from any and all liabilities, rights, causes of action, costs, expenses, attorneys fees and any other possible claims arising from the within matter.

4. The terms of this Settlement Agreement bind the Parties hereto and their assigns and successors in interest. This Settlement Agreement is not to be construed as precedent for actions taken or to be taken by the State Medical Board against any other individual(s).

5. This Settlement Agreement contains the entire agreement between the Parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of the Agreement.

6. This Settlement Agreement shall be considered a public record as that term is used in R.C. 149.43.

7. Counsel for Dr. Haj-Hamed, Suzanne E. Kelly and Douglas E. Graff, are executing this Settlement Agreement on behalf of all counsel of record for Dr. Haj-Hamed.

THE STATE MEDICAL BOARD

GHASSAN HAJ-HAMED, M.D.

LANCE TALMAGE, M.D.

11-7-03
DATE

11/12/03
DATE

SUZANNE E. KELLY
Attorney for Dr. Haj-Hamed

REBECCA J. ALBERS
Assistant Attorney General

11-11-03
DATE

11/12/03
DATE

DOUGLAS E. GRAFF
Attorney for Dr. Haj-Hamed

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

GHASSAN HAJ-HAMED, M.D.,	:	
Appellant,	:	JUDGE SHEWARD
v.	:	Case No. 03CVF-07-8068
STATE MEDICAL BOARD OF OHIO,	:	TERMINATION NO. 18
Appellee.	:	BY PG

AGREED ENTRY OF REMAND

Pursuant to the joint motion of Ghassan Haj-Hamed, M.D. and the State Medical Board, it is hereby

ORDERED that *Ghassan Haj-Hamed, M.D. v. State Medical Board of Ohio*, Case No. 03CVF-07-8068 is REMANDED to the State Medical Board for further proceedings consistent with the Settlement Agreement between the parties.

Costs to Appellant, Ghassan Haj-Hamed, M.D.

Richard L. Sheward

DATE

JUDGE SHEWARD

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2003 NOV 12 PM 4:40
CLERK OF COURTS-CV

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

GHASSAN HAJ-HAMED, M.D.,	:	
Appellant,	:	JUDGE SHEWARD
v.	:	Case No. 03CVF-07-8068
STATE MEDICAL BOARD OF OHIO,	:	
Appellee.	:	

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2003 NOV 12 AM 11:22
CLERK OF COURTS-CV

JOINT MOTION TO REMAND APPEAL
OF GHASSAN HAJ-HAMED, M.D.

Having reached a settlement of this appeal, the Appellant, Ghassan Haj-Hamed, M.D. and the Appellee, State Medical Board of Ohio, jointly move this Court to enter an order remanding this matter involving Ghassan Haj-Hamed, M.D. to the State Medical Board for further proceedings consistent with the terms of settlement. The grounds for this motion are more fully explained in the accompanying memorandum in support.

Respectfully submitted,

JIM PETRO (0022096)
Attorney General

DOUGLAS E. GRAFF (0013222)
604 East Rich Street
Columbus, Ohio 43215-5341
(614) 228-5800
(614) 228- 8811 Fax

Counsel for Ghassan Haj-Hamed, M.D.

REBECCA J. ALBERS (0059203)
Senior Assistant Attorney General
Health and Human Services Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3428
(614) 466-8600
(614) 466-6090 Fax

Counsel for the State Medical Board

MEMORANDUM IN SUPPORT

This matter concerns the administrative appeal pursuant to R.C. 119.12 filed by Appellant, Ghassan Haj-Hamed, M.D. of an Order of the State Medical Board (Board) entered in his case.

Dr. Haj-Hamed and the Board have reached a resolution of the issues raised by his appeal. However, inasmuch as his case is currently pending in this Court, the Board cannot act until his case is remanded by the Court.

Dr. Haj-Hamed and the Board ask the Court to remand his case back to the Board for further proceedings consistent with the terms of the Settlement Agreement between the Board and Dr. Haj-Hamed. (Appendix A.)

Respectfully submitted,

JIM PETRO (0022096)
Attorney General

DOUGLAS E. GRAFF (0013222)
604 East Rich Street
Columbus, Ohio 43215-5341
(614) 228-5800
(614) 228- 8811 Fax

REBECCA J. ALBERS (0059203)
Senior Assistant Attorney General
Health and Human Services Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3428
(614) 466-8600
(614) 466-6090 Fax

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

FILED
COMMON PLEAS COURT
FRANKLIN CO., OHIO

2003 NOV 12 PM 4:09
CLERK OF COURTS-CV

GHASSAN HAJ-HAMED, M.D.,	:	
Appellant,	:	JUDGE CAIN
v.	:	Case No. 03CVF-07-8067
STATE MEDICAL BOARD OF OHIO,	:	
Appellee.	:	

TERMINATION NO._____
BY:_____

AGREED ENTRY OF REMAND

Pursuant to the joint motion of Ghassan Haj-Hamed, M.D. and the State Medical Board, it is hereby

ORDERED that *Ghassan Haj-Hamed, M.D. v. State Medical Board of Ohio*, Case No. 03CVF-07-8067 is REMANDED to the State Medical Board for further proceedings consistent with the Settlement Agreement between the parties.

Costs to Appellant, Ghassan Haj-Hamed, M.D.

_____
DATE

_____
JUDGE CAIN

SUZANNE E. KELLY (0039715)
Karr & Sherman
One Easton Oval, Suite 550
Columbus, Ohio 43219
(614) 478-6000
(614) 478-8130

Counsel for Ghassan Haj-Hamed, M.D.

REBECCA J. ALBERS (0059203)
Senior Assistant Attorney General
Health and Human Services Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3428
(614) 466-8600
(614) 466-6090 Fax

Counsel for the State Medical Board

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

GHASSAN HAJ-HAMED, M.D.,	:	
Appellant,	:	JUDGE CAIN
v.	:	Case No. 03CVF-07-8067
STATE MEDICAL BOARD OF OHIO,	:	
Appellee.	:	

JOINT MOTION TO REMAND APPEAL
OF GHASSAN HAJ-HAMED, M.D.

Having reached a settlement of this appeal, the Appellant, Ghassan Haj-Hamed, M.D., and the Appellee, State Medical Board of Ohio, jointly move this Court to enter an order remanding this matter involving Ghassan Haj-Hamed, M.D. to the State Medical Board for further proceedings consistent with the terms of settlement. The grounds for this motion are more fully explained in the accompanying memorandum in support.

Respectfully submitted,

SUZANNE E. KELLY (0039715)
Karr & Sherman
One Easton Oval, Suite 550
Columbus, Ohio 43219
(614) 478-6000
(614) 478-8130

Counsel for Ghassan Haj-Hamed, M.D.

JIM PETRO (0022096)
Attorney General

REBECCA J. ALBERS (0059203)
Senior Assistant Attorney General
Health and Human Services Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3428
(614) 466-8600
(614) 466-6090 Fax

Counsel for the State Medical Board

MEMORANDUM IN SUPPORT

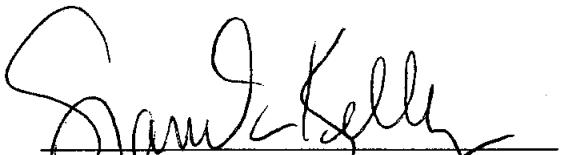
This matter concerns the administrative appeal pursuant to R.C. 119.12 filed by Appellant, Ghassan Haj-Hamed, M.D. of an Order of the State Medical Board (Board) entered in his case.

Dr. Haj-Hamed and the Board have reached a resolution of the issues raised by his appeal. However, inasmuch as his case is currently pending in this Court, the Board cannot act until his case is remanded by the Court.

Dr. Haj-Hamed and the Board ask the Court to remand his case back to the Board for further proceedings consistent with the terms of the Settlement Agreement between the Board and Dr. Haj-Hamed. (Appendix A.)

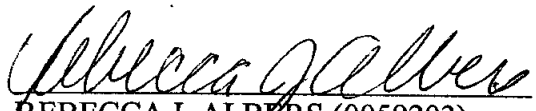
Respectfully submitted,

JIM PETRO (0022096)
Attorney General



SUZANNE E. KELLY (0039715)
Karr & Sherman
One Easton Oval, Suite 550
Columbus, Ohio 43219
(614) 478-6000
(614) 478-8130

Counsel for Ghassan Haj-Hamed, M.D.



REBECCA J. ALBERS (0059203)
Senior Assistant Attorney General
Health and Human Services Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3428
(614) 466-8600
(614) 466-6090 Fax

Counsel for the State Medical Board

STATE MEDICAL BOARD OF OHIO
2003 JUL 22 P 1:09

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

STATE MEDICAL BOARD OF OHIO
2003 AUG -4 A 11:44

03CVF07

GHASSAN HAJ-HAMED, M.D.
4056 Clifton Ridge
Cincinnati, Ohio 45220

Appellant,

vs.

STATE MEDICAL BOARD OF OHIO
77 South High Street, 17th Floor
Columbus, Ohio 43215-6127,

Appellee.

Case No.

Judge

FILED
COMMON PLEAS COURT
FRANKLIN CO., OHIO
2003 JUL 22 PM 1:42
CLERK OF COURTS-CV

NOTICE OF APPEAL OF THE ORDER AND ENTRY FROM THE STATE MEDICAL BOARD OF OHIO DATED JULY 9, 2003

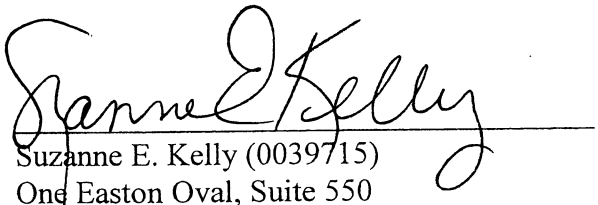
Appellant, Ghassan Haj-Hamed, M.D., by and through his attorney hereby gives Notice of Appeal to the Common Pleas Court of Franklin County, Ohio from the Findings, Order and Journal Entry of the State Medical Board of Ohio, July 9, 2003 attached hereto as Exhibit A. The Findings Order and Journal Entry of the State Medical Board was mailed to Appellant on the 11th day of July, 2003. Appellant contends that the Findings, Order and Journal Entry appealed from arises from a notice of hearing that was not properly served under the requirements of R.C. 119.07. This failure of proper service precluded counsel's ability to timely file a request for hearing. Accordingly, the State Medical Board denied Appellant due process by its failure to provide a hearing on the allegations in

the citation. The Findings, Order and Journal Entry is not supported by the reliable, probative, and substantial evidence and is not otherwise in accordance with the law.

Further, and without limiting the generality of the foregoing, Appellant contends that the Findings, Order and Journal Entry and the related investigation conducted by the Board violated the protection afforded to the Appellant pursuant to the Constitution of the State of Ohio and the Constitution of the United States including, without limitation, the due process protections thereof.

Respectfully submitted,

KARR & SHERMAN CO., LPA.



Suzanne E. Kelly (0039715)
One Easton Oval, Suite 550
Columbus, Ohio 43219
(614) 478-6000
(614) 478-8130 Fax
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Notice of Appeal was delivered to the State Medical Board of Ohio, 77 South High Street, 17th Floor, Columbus, Ohio 43266-0315, by regular U.S. mail, this 22nd day of July 2003.

Suzanne E. Kelly

STATE MEDICAL BOARD OF OHIO
2003 AUG -4 A 11:44

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

03CVF07 08068

GHASSAN HAJ-HAMED, M.D. 4056 Clifton Ridge Cincinnati, Ohio 45220	:	
Appellant,	:	Case No.
vs.	:	Judge
STATE MEDICAL BOARD OF OHIO 77 South High Street, 17th Floor Columbus, Ohio 43215-6127,	:	
Appellee.	:	

STATE MEDICAL BOARD OF OHIO
2003 JUL 22 P 1:11

FILED
COMMON PLEAS COURT
FRANKLIN CO., OHIO
2003 JUL 22 AM 1:48
CLERK OF COURTS CV

NOTICE OF APPEAL OF THE ORDER AND ENTRY FROM THE STATE MEDICAL BOARD OF OHIO DATED MAY 14, 2003

Appellant, Ghassan Haj-Hamed, M.D., by and through his attorney, hereby gives Notice of Appeal to the Common Pleas Court of Franklin County, Ohio from the Order and Entry of the State Medical Board of Ohio, dated May 14, 2003, attached hereto as Exhibit A. The Order and Entry of the State Medical Board was mailed to Appellant on the 15th day of May 2003, by regular U.S. Mail. Appellant receive no information concerning his rights of appeal under R.C. §119.12. The Board's failure to properly serve the Order and Entry as required under R.C. §119.07, §119.09 and §119.12 has materially delayed the Appellant in exercising his right to appeal.

Appellant contends that the Entry and Order appealed from is not a properly adopted and served Action or Adjudication of the State Medical Board, and that the Order is not supported by reliable, probative, and substantial evidence and is not otherwise in accordance with the law.

Further, and without limiting the generality of the foregoing, Appellant contends that the Order and Entry and the related investigation conducted by the Board violated the protection afforded to the Appellant pursuant to the Constitution of the State of Ohio and the Constitution of the United States including, without limitation, the due process protections thereof.

Respectfully submitted,

GRAFF & ASSOCIATES, L.P.A.

Douglas E. Graff (0013222)
604 East Rich Street
Columbus, Ohio 43215-5341
(614) 228-5800
(614) 228-8811 Fax
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Notice of Appeal was delivered to the State Medical Board of Ohio, 77 South High Street, 17th Floor, Columbus, Ohio 43215-6127, by regular U.S. mail, this 22 day of July 2003.

Douglas E. Graff

State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.state.oh.us/med/

July 9, 2003

Ghassan Haj-Hamed, M.D.
4056 Clifton Ridge
Cincinnati, OH 45220

Dear Doctor Haj-Hamed:

Please find enclosed a certified copy of the Findings, Order and Journal Entry approved and confirmed by the State Medical Board meeting in regular session on July 9, 2003.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal must be taken to the Franklin County Court of Common Pleas.

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board of Ohio and the Franklin County Court of Common Pleas. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12 of the Ohio Revised Code.

Very truly yours,

Lance A. Talmage MD

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5150 9364
RETURN RECEIPT REQUESTED

Mailed ~~7/10/03~~
7/11/03

Robert W. Carran, Esq.
Taliaferro, Mehling, Shirooni, Carran & Keys, PLLC
P.O. Box 468
Covington, Kentucky 41012-0468

CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5150 9357
RETURN RECEIPT REQUESTED

Robert E. Blau, Esq.
Blau, Jolly, Blau, Kriege & Turner, PLLC
3699 Alexandria Pike, P.O. Box 249
Cold Spring, Kentucky 41076

CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5150 9340
RETURN RECEIPT REQUESTED

J. Fox DeMoisey, Esq.
1210 Starks Building
455 South Fourth Avenue
Louisville, Kentucky 40202

CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5150 9333
RETURN RECEIPT REQUESTED

W. Robert Lotz, Esq.
120 West Fifth Street
Covington, Kentucky 41011

CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5150 9326
RETURN RECEIPT REQUESTED

Suzanne E. Kelly, Esq.
Karr & Sherman
One Easton Oval, Suite 550
Columbus, OH 43219

CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5150 9319
RETURN RECEIPT REQUESTED

CERTIFICATION

I hereby certify that the attached copy of the Findings, Order and Journal Entry approved by the State Medical Board, meeting in regular session on July 9, 2003, constitutes a true and complete copy of the Findings, Order and Journal Entry in the Matter of Ghassan Haj-Hamed, M.D., as it appears in the Journal of the State Medical Board of Ohio.

This Certification is made by the authority of the State Medical Board of Ohio in its behalf.

Lance A. Talmage MD

Lance A. Talmage, M.D.
Secretary

(SEAL)

July 9, 2003
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF	*
	*
GHASSAN HAJ-HAMED, M.D.	*

FINDINGS, ORDER AND JOURNAL ENTRY

By letter dated May 14, 2003, notice was given to Ghassan Haj-Hamed, M.D., that the State Medical Board intended to consider disciplinary action regarding his license to practice medicine and surgery in the State of Ohio, and that he was entitled to a hearing if such hearing was requested within thirty (30) days of the mailing of said notice. In accordance with Section 119.07, Ohio Revised Code, said notice was sent via certified mail, return receipt requested, to the address of record of Dr. Haj-Hamed, that being 4056 Clifton Ridge, Cincinnati, Ohio 45220.

Signed certified mail receipts were returned to the Medical Board offices documenting proper service of the notice on Dr. Haj-Hamed and his attorneys of record. A hearing request was received from Dr. Haj-Hamed, however, it is considered untimely due to the fact that the request was received more than thirty (30) days since the mailing of the notice.

WHEREFORE, having reviewed the affidavit of Charles A. Woodbeck, Enforcement Coordinator, with accompanying documentation, the affidavit of Debra L. Jones, Chief, Records, Renewal and Continuing Medical Education, and the notice of opportunity for hearing, which are attached hereto and incorporated herein, the Board hereby finds that there is reliable, probative and substantial evidence to support the allegations as set forth in the notice of opportunity for hearing issued on May 14, 2003.

It is hereby ORDERED that the certificate of Ghassan Haj-Hamed, M.D., to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time.

This Order shall remain in effect until either of the following occurs:

1. A final resolution on the merits of the matter currently pending before the Kentucky Board of Medical Licensure is reached and, based upon that resolution, the Ohio Board enters a Final Order following issuance of a notice of opportunity for hearing.

2. The Ohio Board determines, after a final resolution of the pending Kentucky Board action, that no further action is warranted and notifies Dr. Haj-Hamed of that determination in writing.

This ORDER shall become effective immediately upon mailing of notification of approval by the State Medical Board of Ohio.

This Order is hereby entered upon the Journal of the State Medical Board of Ohio for the 9th day of July 2003 and the original thereof shall be kept with said Journal.

Lance A. Talmage, M.D.
Secretary

(SEAL)

July 9, 2003
Date

AFFIDAVIT

SS: Franklin County, Ohio

I, Debra Jones, being duly cautioned and sworn, do hereby depose and say:

1) That I am employed by the State Medical Board of Ohio (hereinafter, "The Board")

2) That I serve the Board in the position of Chief, Continuing Medical Education, Records, and Renewal;

3) That in such position I am the responsible custodian of all public licensee records maintained by the Board pertaining to individuals who have received certificates issued pursuant to Chapter 4731., Ohio Revised Code;

4) That I have this day carefully examined the records of the Board pertaining to Ghassan Haj-Hamed, M.D.

5) That based on such examination, I have found the last known address of record of Ghassan Haj-Hamed, M.D. to be:

4056 Clifton Ridge
Cincinnati, Ohio 45220

6) Further, Affiant Sayeth Naught.

Debra L. Jones, Chief
Continuing Medical Education,
Records and Renewal

Sworn to and signed before me, Angela D. Fields, Notary Public, this 18th day of June, 2003.

ANGELA D. FIELDS
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 05/11/06

Notary Public

7000 0600 0024 5151 3187

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

JAM

Postage	$ 3.85
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 7.90

Postmark Here

Recipient's Name (Please Print Clearly) (To be completed by mailer)
Street, Apt. No.; or PO Box No. Ghassan Haj-Hamed, M.D.
4056 Clifton Ridge
City, State, ZIP+4 Cincinnati, Ohio 45220

PS Form 3800, February 2000 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Ghassan Haj-Hamed, M.D.
4056 Clifton Ridge
Cincinnati, Ohio 45220

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery 5-16-03

C. Signature X ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label) 7000 0600 0024 5151 3187 JAM

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952

7000 0600 0024 5151 3170

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

JAM

Postage	$ 3.85
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 7.90

Postmark Here

Recipient's Name (Please Print Clearly) (To be completed by mailer)
Street, Apt. No.; or PO Box No. Robert W. Carran, Esq.
Taliaferro, Mehling, Shirooni, Carran & Keys, PLLC
City, State, ZIP+4 P.O. Box 468
Covington, Kentucky 41012-0468

PS Form 3800, February 2000 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Robert W. Carran, Esq.
Taliaferro, Mehling, Shirooni, Carran & Keys, PLLC
P.O. Box 468
Covington, Kentucky 41012-0468

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

C. Signature X ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label) 7000 0600 0024 5151 3170 JAM

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952

7000 0600 0024 5151 3163

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

JAM

Postage	$ 3.85
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 7.90

Postmark Here

Recipient's Name (Please Print Clearly) (To be completed by mailer)
Street, Apt. No.; or PO Box No. Robert E. Blau, Esq.
Blau, Jolly, Blau, Kriege & Turner, PLLC
3699 Alexandria Pike, P.O. Box 249
City, State, ZIP+4 Cold Spring, Kentucky 41076

PS Form 3800, February 2000 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Robert E. Blau, Esq.
Blau, Jolly, Blau, Kriege & Turner, PLLC
3699 Alexandria Pike, P.O. Box 249
Cold Spring, Kentucky 41076

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery 5-20-03

C. Signature X ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label) 7000 0600 0024 5151 3163 JAM

PS Form 3811, July 1999 Domestic Return Receipt

7000 0600 0024 5151 3125

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

JAM

CITE- HAT-HAMER

Postage	$ 3.25
Certified Fee	2.80
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 7.90

Postmark Here
MAY 15 2003

Rec J. Fox DeMoisey, Esq.
Stre 1210 Starks Building
455 South Fourth Avenue
City Louisville, Kentucky 40202

PS Form 3800, February 2000 — See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

J. Fox DeMoisey, Esq.
1210 Starks Building
455 South Fourth Avenue
Louisville, Kentucky 40202

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery 5/19/03

C. Signature X [signature] ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

CITE HAT-HAMER

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label) 7000 0600 0024 5151 3125 JAM

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952

7000 0600 0024 5151 3156

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

JAM

CITE- HAT-HAMER

Postage	$ 3.35
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 7.90

Postmark Here
MAY 15 2003

W. Robert Lotz, Esq.
120 West Fifth Street
Covington, Kentucky 41011

PS Form 3800, February 2000 — See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

W. Robert Lotz, Esq.
120 West Fifth Street
Covington, Kentucky 41011

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery 5/19/03

C. Signature [signature] ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

CITE- HAT-HAMER

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

le Number (Copy from service label) 7000 0600 0024 5151 3156 JAM

3811, July 1999 Domestic Return Receipt 102595-00-M-0952

AFFIDAVIT

SS: Franklin County, Ohio

I, Charles A. Woodbeck, being duly cautioned and sworn, do hereby depose and state that the following is true based upon my first-hand knowledge:

1) I am employed by the State Medical Board of Ohio (hereinafter, "The Board").

2) I serve the Board in the position of Enforcement Coordinator.

3) In the course of my regular duties, I am responsible for investigating complaints against applicants and licensees under the jurisdiction of the Board and assembling the evidence necessary to prove potential violations of the Medical Practices Act of Ohio, Chapters 4730., 4731., 4760., and 4762., Ohio Revised Code.

4) I investigated the complaint filed against Ghassan Haj-Hamed, M.D., which resulted in a Notice of Opportunity for Hearing on May 14, 2003.

6) During the course of my investigation, I obtained certified copies of the Complaint, Emergency Order of Suspension, Amended Emergency Order of Suspension, and Final Order Affirming the Amended Emergency Order of Suspension, of the Kentucky Board of Medical Licensure. Copies of the above listed documents are attached to and incorporated herein.

7) Further, Affiant Sayeth Naught.

Charles A. Woodbeck
Enforcement Coordinator

Sworn to and signed before me, Angela D. Fields, Notary Public, this 18th day of June, 2003.

NOTARIAL SEAL STATE OF OHIO

ANGELA D. FIELDS
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 05/11/06

Notary Public

State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.state.oh.us/med/

May 14, 2003

Ghassan Haj-Hamed, M.D.
4056 Clifton Ridge
Cincinnati, Ohio 45220

Dear Doctor Haj-Hamed:

In accordance with R.C. Chapter 119., you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

(1) On or about February 7, 2003, the Kentucky Board of Medical Licensure (Kentucky Board) filed a Complaint against your license. Further, on or about February 7, 2003, the Kentucky Board filed an Emergency Order of Suspension, effective upon your receipt of the Order, suspending your Kentucky license to practice medicine and prohibiting you from practicing medicine in Kentucky, until resolution of the above Kentucky Board Complaint. Copies of the Kentucky Board Complaint and Emergency Order of Suspension are attached hereto and incorporated herein.

(2) On or about April 22, 2003, the Kentucky Board issued an Amended Emergency Order of Suspension, a copy of which is attached hereto and incorporated herein.

(3) On or about May 9, 2003, the Kentucky Board filed a Final Order Affirming the Amended Emergency Order of Suspension, which included the Conclusion of Law that the Kentucky Board had proved that there is substantial evidence that you were guilty of a violation of law that constitutes immediate danger to the public health, safety, or welfare, as alleged in the Kentucky Board Amended Emergency Order of Suspension. A copy of the Kentucky Board Final Order Affirming the Amended Emergency Order of Suspension is attached hereto and incorporated herein.

The Kentucky Board Emergency Orders of Suspension, as alleged in paragraphs one (1) and two (2) above, and the Kentucky Board Final Order Affirming the Amended Emergency Order of Suspension, as alleged in paragraph three (3) above, constitute "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine

Mailed 5/15/03

and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as that clause is used in R.C. 4731.22(B)(22).

Pursuant to R.C. Chapter 119., you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty days of the time of mailing of this notice.

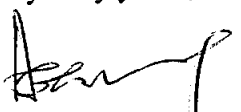
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand or place you on probation.

Please note that, whether or not you request a hearing, R.C. 4731.22(L), provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Anand G. Garg, M.D.
Secretary

AGG/jag
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5151 3187
RETURN RECEIPT REQUESTED

Robert W. Carran, Esq.
Taliaferro, Mehling, Shirooni, Carran & Keys, PLLC
P.O. Box 468
Covington, Kentucky 41012-0468

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3699 Alexandria Pike, P.O. Box 249
Cold Spring, Kentucky 41076

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J. Fox DeMoisey, Esq.
1210 Starks Building
455 South Fourth Avenue
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W. Robert Lotz, Esq.
120 West Fifth Street
Covington, Kentucky 41011

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FILED OF RECORD
FEB 07 2003
K.B.M.L.

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 884

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY GHASSAN HAJ-HAMED, M.D., LICENSE NO. 33002, 125 WEST SHELBY STREET, BELLEVUE, KENTUCKY 41073

AND

THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY JUAN C. MEJIA, M.D., LICENSE NO. 35414, 200 FAIRFIELD AVENUE, BELLEVUE, KENTUCKY 41073

COMPLAINT

Comes now the Complainant, Preston P. Nunnelley, M.D., Chair of the Kentucky Board of Medical Licensure's Panel B, and on behalf of the Panel which met on January 16, 2002, states for its Complaint against the licensees, Ghassan Haj-Hamed, M.D. and Juan C. Mejia, M.D., as follows:

1. At all relevant times, Ghassan Haj-Hamed, M.D. and Juan C. Mejia, M.D., were licensed by the Board to practice medicine in the Commonwealth of Kentucky.
2. The licensees' medical specialty is Internal Medicine.
3. In July 2001, the Board received a grievance that the licensees were inappropriately prescribing controlled substances to patients.
4. Dr. Haj-Hamed and his brother, Dr. Husam Hamed own two Urgent Care Centers in Cold Springs, Kentucky and Oakley, Ohio. The licensee and his brother also operate the Riverside Clinics in Bellevue, Kentucky; Falmouth, Kentucky; Cold Springs, Kentucky and Fairfield, Ohio. Dr. Juan Mejia

practiced medicine at one or more of the above locations – in particular, the Kentucky office(s).

5. Detective Paula Redman, Northern Kentucky Drug Strike Force, contacted the Kentucky Board of Medical Licensure and forwarded information from an investigation into the inappropriate prescribing of controlled substances by the licensees. As part of the investigation, an informant was sent to see Dr. Haj-Hamed with a complaint of allergies and requesting Vicodin. The informant denied any complaint of pain. The licensee prescribed ten (10) Vicodin tablets without a legitimate reason to prescribe the controlled substance. The informant visited the licensee on four occasions and received controlled substances on each visit.

6. Following a joint investigation by the Drug Enforcement Agency (DEA), the FBI, and local authorities, a search warrant was issued for properties belonging to Dr. Haj-Hamed. The licensee was arrested on September 25, 2002 and charged with 24 counts of violating KRS 218A.1404 – prescribing controlled substances contrary to the law.

7. Employee A reports that she was employed by Dr. Haj-Hamed from March 1999 through March 2000. Employee A states that part of the reason she left her job was that she was uncomfortable working there because so many patients were drug seekers. She states that the patients used Dr. Haj-Hamed's pager number at night and knew what to say to get the drugs they wanted. She states that the Bellevue office was the worst location. She says the licensee used contracts with some patients, tested patients suspected of drug

seeking but they did not have the time to track the large number of patients suspected of abusing drugs. The employee states that she was never pressured by the licensee to give patients controlled substances and that the licensee signed the controlled substances prescriptions for the patients she saw.

8. Employee B states that she works at the Riverside Clinic in Cold Springs, Kentucky. She previously worked in the Cold Springs Urgent Care Center. She states that in her present employment, she feels like a drug pusher. She reports that the doctors hand out Oxycontin like it is candy. The employee states that Dr. Haj-Hamed specifically instructed the staff to tell patients calling for appointments that the doctors will prescribe the pain medication they request. He informed the staff that they were to report to him any patient complaint of not obtaining the requested drugs. Further, the licensee stated that he would fire any doctor who did not write prescriptions requested by patients. When the patient schedules an appointment, the staff pulls the chart and writes out the prescriptions they normally receive. The physicians frequently sign the prescriptions and on occasion increase the prescription. The employee reports that if a pharmacy calls regarding an early refill of a prescription, the doctors will tell them to refill it anyway. Both the licensees are known to refill early prescriptions. The employee states that if a KASPER report comes back and shows signs of abuse or diversion by a patient– i.e. doctor shopping – the physicians will continue to prescribe for the patient. The employee reports that the office performs a large number of injections of Valium, Nubain and Morphine to patients and also dispenses Adapex

frequently. Patients of foreign nationalities will come to the office and request either Dr. Haj-Hamed or his brother. They will speak to the physicians in their native language and receive injections and prescriptions. No medical records are maintained on these individuals.

9. Paula York, Cabinet for Health Services, Drug Control and Professional Services, reports that that Adapex (phentramine) is a controlled substance and that by law a physician must report to KASPER all controlled substances dispensed. A KASPER search indicates that Dr. Haj-Hamed had not reported the Adapex that was dispensed and logged at his offices.

10. Darren Yeager, RPh, of the Walgreen's Pharmacy in Highland Heights, Kentucky, reported that he had an altercation with Dr. Haj-Hamed when Mr. Yeager refused to refill a patient's methadone prescription written by the licensee. The patient had informed the pharmacist that she was in a methadone clinic and the licensee offered to write the methadone prescription when she was in his office for treatment of back pain. The licensee became livid with Mr. Yeager and reported him to the Walgreen's main office. A second pharmacist at this location reported that on another occasion, Dr. Haj-Hamed had insisted on an early refill and the pharmacist refused. The licensee finally changed the name of the drug to circumvent the early refill issue.

11. Clarence Martin, RPh, of Martin's Cold Springs Pharmacy states that the pharmacy had become very selective and frequently refused to refill

methadone and oxycontin prescriptions for patients from the Riverside Clinic in Cold Springs.

12. Chief William Cole, Bellevue Police Department, states that he has a binder of daily run reports to the Riverside Clinic in Bellevue, which is owned by Dr. Haj-Hamed. Chief Cole reports that patients are fighting in the parking lot, people are soliciting prescriptions from patients exiting the clinic and other patients are offering their prescriptions for sale. He states that he sees vehicles on the premises from Indiana, West Virginia and Ohio. The busiest day at the clinic is always the day of the week Dr. Haj-Hamed is present and seeing patients.

13. Danna Droz, RPh, JD, Cabinet for Health Services, Drug Control and Professional Services, Manager was requested to examine Dr. Haj-Hamed's prescribing patterns and identify patients with whom inappropriate prescribing may have occurred. Ms. Droz listed 26 patients whose records should be reviewed. Ms. Droz's review of the licensee's KASPER records raised the following concerns:

- Long-term use of one or more controlled substances;
- Combinations of controlled substances favored by persons who abuse or divert controlled substances;
- Patients using multiple pharmacies;
- All patients receiving small quantities and no refills for an extended period of time; or
- Long-term use of controlled substances for which a short-term use is generally recommended.

Ms. Droz also reported receiving complaints about excessive prescribing of controlled substances by the licensee. One complaint alleged that 90% of the prescriptions from the licensee's office are for controlled substances.

14. A Board Consultant, in reviewing seven patient charts where treatment was rendered by both licensees, opined that,

> "In summary, the records reviewed as stated above, ... review of the KASPER Reports for the year 2000 from Dr. Haj-Hamed and Dr. Mejia and review of the charts as listed above, it does not appear that legitimate practice of medicine is occurring in the practice of Dr. Haj-Hamed and Dr. Mejia. It would appear that Dr. Mejia is slightly better with documentation and ordering diagnostic tests but neither really follow up once they have been requested. I do not believe that controlled substances were prescribed for legitimate medical purposes. I believe even more strongly now that as I stated in my July 11, 2002 note, that within a reasonable degree of medical probability, these physicians constitute a threat to existing patients and the public in general in my opinion.
>
> There is a very obvious pattern in that these doctors see patients back on a very regular basis for other than legitimate medical purposes and in all likelihood use this in order to generate billings and collections or revenue for the practice.
>
> Controlled substances are prescribed likely in order to keep the 'patients' coming back to the office for trigger point injections and other joint injections so that further billing can be generated. This is true in my opinion, within a reasonable degree of medical probability."

In the seven (7) charts reviewed by the consultant, both Dr. Haj-Hamed and Dr. Mejia had provided all or nearly all of the treatment to the patients and subsequently prescribed all or nearly all of the controlled substances to the patients reviewed. The consultant indicated that charts lacked sufficient history and physical examination documentation. Often, there was no treatment plan, informed consent, periodic KASPER reviews, drug screens or consultations documented in the patient chart. Where there was a referral to a consultant, there was not any follow-up or any indication as to how that consultation affected the course of treatment. Of particular concern, was the failure to address problems revealed in the few KASPER reports and drug

screens performed. The consultant found that often there were no evaluations for compliance with controlled substance laws and regulations on the patient's part and that there did not appear to be any indication the licensees were compliant with the controlled substance laws and regulations either. The consultant determined that "care" rendered in the cases reviewed did not meet the minimally acceptable standard of care and in fact posed a danger to the health, safety and welfare of the patients and the public..

15. As an example of the problems found in the consultant's evaluation of the licensees' practice, Patient B's chart revealed a KASPER requested on May 9, 2002 and covering the period of January 1, 2001 through April 15, 2002. The consultant determined that the patient received prescriptions and filled them for controlled substances from 12 different physicians or medical locations and had them filled at 12 different pharmacies through that time period. Despite this information, there was no mention of it in the patient chart and there was no change in the medications prescribed to this patient. Additionally, there was noted to be a definite overlap in medications as they were filled early on several occasions as well. None of this information altered the course of treatment rendered by the licensees. In fact, the patient's medications were increased in July 2002 to 60 Xanax, 90 Ultram and 60 Lorcet 10's at a time with the visits being spaced out every 20 days. Additionally, there were no medical records for the year 2000, when the patient was being prescribed Xanax, Hydrocodone and antitussive medication containing hydrocodone. Consequently, there was an overlap with the

antitussive hydrocodone and the regularly prescribed Hydrocodone. The consultant found the records maintained on the patient to be inadequate, especially for continued prescription of controlled substances. Finally, the consultant stated that, "within a reasonable degree of medical probability, there is no evidence that the practice of medicine was being carried out in Dr. Haj-Hamed's 'care' of [Patient B]."

16. By their conduct, the licensees have violated KRS 311.595(9), as illustrated by 311.597(1)(a), (b) and (d) and (4). Accordingly, legal grounds exist for disciplinary action against their Kentucky medical licenses.

17. The licensees are directed to respond to the allegations delineated in the Complaint within thirty (30) days of service thereof and is further given notice that:

    a. Their failure to respond may be taken as an admission of the charges;

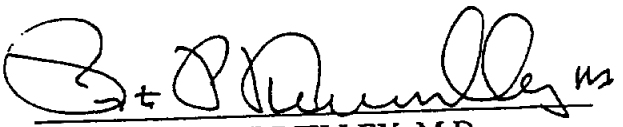
    b. They may appear alone or with counsel, may cross-examine all prosecution witnesses and offer evidence in his defense.

18. NOTICE IS HEREBY GIVEN that a hearing on this Complaint is scheduled for August 6 – 8, 2003 at 9:00 a.m., Eastern Standard Time, at the Kentucky Board of Medical Licensure, Hurstbourne Office Park, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Said hearing shall be held pursuant to the Rules and Regulations of the Kentucky Board of Medical Licensure. This hearing shall proceed as scheduled and the hearing date shall only be modified by leave of the Hearing Officer upon a showing of good cause.

WHEREFORE, Complainant prays that appropriate disciplinary action

be taken against the licenses to practice medicine held by Ghassan Haj-Hamed, M.D. and Juan C. Mejia, M.D

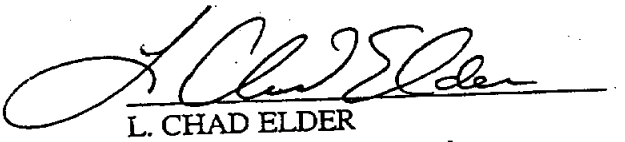
This 7th day of February, 2003.



PRESTON P. NUNNELLEY, M.D.
CHAIR, INQUIRY PANEL B

CERTIFICATE OF SERVICE

I certify that the original of this Complaint was delivered to Mr. C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, and a copy was mailed to Division of Administrative Hearings, 1024 Capital Center Drive, Frankfort, Kentucky 40601-8204 and a copy was sent via certified mail, return-receipt requested to Ghassan Haj-Hamed, M.D., 125 West Shelby Street, Bellevue, Kentucky 41073, Honorable Fox Demoisey, 1210 Starks Building, 455 South Fourth Avenue, Louisville, KY 40202, and Juan C. Mejia, M.D., 200 Fairfield Ave., Bellevue, Kentucky 41073 on this 7th day of February, 2003.



L. CHAD ELDER
Assistant General Counsel
Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
Louisville, Kentucky 40222
(502) 429-8046

FILED OF RECORD
FEB 07 2003
K.B.M.L.

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 884

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY GHASSAN HAJ-HAMED, M.D., LICENSE NO. 33002, 125 WEST SHELBY STREET, BELLEVUE, KENTUCKY 42431

EMERGENCY ORDER OF SUSPENSION

The Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through its Inquiry Panel B, considered this matter at its January 16, 2003 meeting. At that meeting, Inquiry Panel B considered a memorandum from Betty Prater, Medical Investigator, dated December 23, 2002, and the licensee's response as provided by his attorney, Fox Demoisey dated January 6, 2003 and the report of a Board Consultant dated January 8, 2003. Having considered all of this information and being sufficiently advised, Inquiry Panel B ENTERS the following EMERGENCY ORDER OF SUSPENSION, in accordance with KRS 311.592(1) and 13B.125(1):

FINDINGS OF FACT

Pursuant to KRS 13B.125(2) and based upon the information available to it, Inquiry Panel B concludes there is probable cause to make the following Findings of Fact, which support its Emergency Order of Suspension:

1. At all relevant times, Ghassan Haj-Hamed, M.D., was licensed by the Board to practice medicine in the Commonwealth of Kentucky.
2. The license's medical specialty is Internal Medicine.
3. In July 2001, the Board received a grievance that the licensee and Juan Mejia, M.D. were inappropriately prescribing controlled substances to patients.

4. Dr. Haj-Hamed and his brother, Dr. Husam Hamed own two Urgent Care Centers in Cold Springs, Kentucky and Oakley, Ohio. The licensee and his brother also operate the Riverside Clinics in Bellevue, Kentucky; Falmouth, Kentucky; Cold Springs, Kentucky and Fairfield, Ohio. Dr. Juan Mejia practiced medicine at one or more of the above locations – in particular, the Kentucky office(s).
5. Detective Paula Redman, Northern Kentucky Drug Strike Force, contacted the Kentucky Board of Medical Licensure and forwarded information from an investigation into the inappropriate prescribing of controlled substances by the licensee and Juan Mejia, M.D. As part of the investigation, an informant was sent to see Dr. Haj-Hamed with a complaint of allergies and requesting Vicodin. The informant denied any complaint of pain. The licensee prescribed ten (10) Vicodin tablets without a legitimate reason to prescribe the controlled substance. The informant visited the licensee on four occasions and received controlled substances on each visit.
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7. Employee A reports that she was employed by Dr. Haj-Hamed from March 1999 through March 2000. Employee A states that part of the reason she left her job was that she was uncomfortable working there because so many

patients were drug seekers. She states that the patients used Dr. Haj-Hamed's pager number at night and knew what to say to get the drugs they wanted. She states that the Bellevue office was the worst location. She says the licensee used contracts with some patients, tested patients suspected of drug seeking but they did not have the time to track the large number of patients suspected of abusing drugs. The employee states that she was never pressured by the licensee to give patients controlled substances and that the licensee signed the controlled substances prescriptions for the patients she saw.

8. Employee B states that she works at the Riverside Clinic in Cold Springs, Kentucky. She previously worked in the Cold Springs Urgent Care Center. She states that in her present employment, she feels like a drug pusher. She reports that the doctors hand out Oxycontin like it is candy. The employee states that Dr. Haj-Hamed specifically instructed the staff to tell patients calling for appointments that the doctors will prescribe the pain medication they request. He informed the staff that they were to report to him any patient complaint of not obtaining the requested drugs. Further, the licensee stated that he would fire any doctor who did not write prescriptions requested by patients. When the patient schedules an appointment, the staff pulls the chart and writes out the prescriptions they normally receive. The physicians frequently sign the prescriptions and on occasion increase the prescription. The employee reports that if a pharmacy calls regarding an early refill of a prescription, the doctors will tell them to refill it anyway. Both the licensee and Juan Mejia, M.D., are known to refill early prescriptions. The employee

states that if a KASPER report comes back and shows signs of abuse or diversion by a patient– i.e. doctor shopping – the physicians will continue to prescribe for the patient. The employee reports that the office performs a large number of injections of Valium, Nubain and Morphine to patients and also dispenses Adapex frequently. Patients of foreign nationalities will come to the office and request either Dr. Haj-Hamed or his brother. They will speak to the physicians in their native language and receive injections and prescriptions. No medical records are maintained on these individuals.

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licensee finally changed the name of the drug to circumvent the early refill issue.

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13. Dana Droz, RPh, JD, Cabinet for Health Services, Drug Control and Professional Services, Manager was requested to examine Dr. Haj-Hamed's prescribing patterns and identify patients with whom inappropriate prescribing may have occurred. Ms. Droz listed 26 patients whose records should be reviewed. Ms. Droz's review of the licensee's KASPER records raised the following concerns:

    1. Long-term use of one or more controlled substances;
    2. Combinations of controlled substances favored by persons who abuse or divert controlled substances;
    3. Patients using multiple pharmacies;
    4. All patients receiving small quantities and no refills for an extended period of time; or

5. Long-term use of controlled substances for which a short-term use is generally recommended.

Ms. Droz also reported receiving complaints about excessive prescribing of controlled substances by the licensee. One complaint alleged that 90% of the prescriptions from the licensee's office are for controlled substances.

14. A Board Consultant, in reviewing seven patient charts where treatment was rendered by both the licensee and Juan Majia, M.D., opined that,

> "In summary, the records reviewed as stated above, ... review of the KASPER Reports for the year 2000 from Dr. Haj-Hamed and Dr. Mejia and review of the charts as listed above, it does not appear that legitimate practice of medicine is occurring in the practice of Dr. Haj-Hamed and Dr. Mejia. It would appear that Dr. Mejia is slightly better with documentation and ordering diagnostic tests but neither really follow up once they have been requested. I do not believe that controlled substances were prescribed for legitimate medical purposes. I believe even more strongly now that as I stated in my July 11, 2002 note, that within a reasonable degree of medical probability, these physicians constitute a threat to existing patients and the public in general in my opinion.
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> There is a very obvious pattern in that these doctors see patients back on a very regular basis for other than legitimate medical purposes and in all likelihood use this in order to generate billings and collections or revenue for the practice.
>
> Controlled substances are prescribed likely in order to keep the 'patients' coming back to the office for trigger point injections and other joint injections so that further billing can be generated. This is true in my opinion, within a reasonable degree of medical probability."

In the seven (7) charts reviewed by the consultant, both Dr. Haj-Hamed and Dr. Mejia had provided all or nearly all of the treatment to the patients and subsequently prescribed all or nearly all of the controlled substances to the patients reviewed. The consultant indicated that charts lacked sufficient history and physical examination documentation. Often, there was no treatment plan, informed consent, periodic KASPER reviews, drug screens or

consultations documented in the patient chart. Where there was a referral to a consultant, there was not any follow-up or any indication as to how that consultation affected the course of treatment. Of particular concern, was the failure to address problems revealed in the few KASPER reports and drug screens performed. The consultant found that often there were no evaluations for compliance with controlled substance laws and regulations on the patient's part and that there did not appear to be any indication the licensee or Dr. Mejia were compliant with the controlled substance laws and regulations either. The consultant determined that "care" rendered in the cases reviewed did not meet the minimally acceptable standard of care and in fact posed a danger to the health, safety and welfare of the patients and the public.

15. As an example of the problems found in the consultant's evaluation of the licensee and Juan Mejia, M.D.'s practice, Patient B's chart revealed a KASPER requested on May 9, 2002 and covering the period of January 1, 2001 through April 15, 2002. The consultant determined that the patient received prescriptions and filled them for controlled substances from 12 different physicians or medical locations and had them filled at 12 different pharmacies through that time period. Despite this information, there was no mention of it in the patient chart and there was no change in the medications prescribed to this patient. Additionally, there was noted to be a definite overlap in medications as they were filled early on several occasions as well. None of this information altered the course of treatment rendered by the licensee or Juan Majie, M.D. In fact, the patient's medications were increased

in July 2002 to 60 Xanax, 90 Ultram and 60 Lorcet 10's at a time with the visits being spaced out every 20 days. Additionally, there were no medical records for the year 2000, when the patient was being prescribed Xanax, Hydrocodone and antitussive medication containing hydrocodone. Consequently, there was an overlap with the antitussive hydrocodone and the regularly prescribed Hydrocodone. The consultant found the records maintained on the patient to be inadequate, especially for continued prescription of controlled substances. Finally, the consultant stated that, "within a reasonable degree of medical probability, there is no evidence that the practice of medicine was being carried out in Dr. Haj-Hamed's 'care' of [Patient B]."

CONCLUSIONS OF LAW

Pursuant to KRS 13B.125(2) and based upon the information available to it, Inquiry Panel B finds there is probable cause to support the following Conclusions of Law, which serve as the legal basis for this Emergency Order of Suspension:

1. The licensee's Kentucky medical license is subject to regulation and discipline by this Board.
2. KRS 311.592(1) provides that the Board may issue an emergency order suspending, limiting, or restricting a physician's license at any time an inquiry panel has probable cause to believe that a) the physician has violated the terms of an order placing him on probation; or b) a physician's practice constitutes a danger to the health, welfare and safety of his patients or the general public.

3. There is probable cause to believe that the licensee has violated KRS 311.595 (9), as illustrated by 311.597(1)(a)and (b)and (4).

4. The Panel concludes there is probable cause to believe this physician's practice constitutes a danger to the health, welfare and safety of his patients or the general public.

6. The Board may draw logical and reasonable inferences about a physician's practice by considering certain facts about a physician's practice. If there is proof that a physician has violated a provision of the Kentucky Medical Practice Act in one set of circumstances, the Board may infer that the physician will similarly violate the Medical Practice Act when presented with a similar set of circumstances. Similarly, the Board concludes that proof of a set of facts about a physician's practice presents representative proof of the nature of that physician's practice in general. Accordingly, probable cause to believe that the physician has committed certain violations in the recent past presents probable cause to believe that the physician will commit similar violations in the near future, during the course of the physician's medical practice.

7. The United States Supreme Court has ruled that it is no violation of the federal Due Process Clause for a state agency to temporarily suspend a license, without a prior evidentiary hearing, so long as 1) the immediate action is based upon a probable cause finding that there is a present danger to the public safety; and, 2) the statute provides for a prompt post-deprivation hearing. Barry v. Barchi, 443 U.S. 55, 61 L.Ed.2d 365, 99 S.Ct. 2642 (1979);

FDIC v. Mallen, 486 U.S. 230, 100 L.Ed.2d 265, 108 S.Ct. 1780 (1988) and Gilbert v. Homar, 117 S.Ct. 1807 (1997). Cf. KRS 13B.125(1).

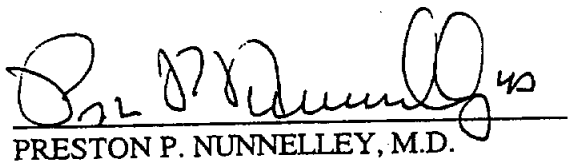
KRS 13B.125(3) provides that the Board shall conduct an emergency hearing on this emergency order within ten (10) working days of a request for such a hearing by the licensee. The licensee has been advised of his right to a prompt post-deprivation hearing under this statute.

EMERGENCY ORDER OF SUSPENSION

Based upon the foregoing Findings of Fact and Conclusions of Law, Inquiry Panel B hereby ORDERS that the license to practice medicine in the Commonwealth of Kentucky held by Ghassan Haj-Hamead, M.D., is SUSPENDED and Dr. Haj-Hamed is prohibited from practicing medicine in the Commonwealth of Kentucky until the resolution of the Complaint setting forth the allegations discussed in this pleading or until such further Order of the Board.

Inquiry Panel B further declares that this is an EMERGENCY ORDER, effective upon receipt by the licensee.

SO ORDERED this 7th day of February, 2003.



PRESTON P. NUNNELLEY, M.D.
CHAIR, INQUIRY PANEL B

CERTIFICATE OF SERVICE

I certify that the original of this Emergency Order of Suspension was delivered to Mr. C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, and copies were mailed via certified mail, return-receipt requested to the Honorable Fox Demoisey, M.D., 1210 Starks Building, 455 South Fourth Avenue, Louisville, KY 40202 and Ghassan Haj-

Hamad, M.D., 125 West Shelby Street, Bellevue, KY 41073 on this 7th day of February, 2003.

L. CHAD ELDER
Assistant General Counsel
Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
Louisville, Kentucky 40222
(502) 429-8046

FILED OF RECORD
APR 22 2003
K.B.M.L.

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 884
ADMINISTRATIVE ACTION NO. 03-KBML-0063

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY GHASSAN HAJ-HAMED, M.D., LICENSE NO. 33002, 125 WEST SHELBY STREET, BELLEVUE, KENTUCKY 42431

AMENDED EMERGENCY ORDER OF SUSPENSION

The Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through its Inquiry Panel B, considered this matter at its January 16, 2003 meeting. At that meeting, Inquiry Panel B considered a memorandum from Betty Prater, Medical Investigator, dated December 23, 2002, and the licensee's response as provided by his attorney, Fox Demoisey dated January 6, 2003 and the report of a Board Consultant dated January 8, 2003. Having considered all of this information and being sufficiently advised, Inquiry Panel B ENTERS the following AMENDED EMERGENCY ORDER OF SUSPENSION, in accordance with KRS 311.592(1) and 13B.125(1):

FINDINGS OF FACT

Pursuant to KRS 13B.125(2) and based upon the information available to it, Inquiry Panel B concludes there is probable cause to make the following Findings of Fact, which support its Amended Emergency Order of Suspension:

1. At all relevant times, Ghassan Haj-Hamed, M.D., was licensed by the Board to practice medicine in the Commonwealth of Kentucky.
2. The license's medical specialty is Internal Medicine.

3. In July 2001, the Board received a grievance that the licensee and Juan Mejia, M.D. were inappropriately prescribing controlled substances to patients.
4. Dr. Haj-Hamed and his brother, Dr. Husam Hamed own two Urgent Care Centers in Cold Springs, Kentucky and Oakley, Ohio. The licensee and his brother also operate the Riverside Clinics in Bellevue, Kentucky; Falmouth, Kentucky; Cold Springs, Kentucky and Fairfield, Ohio. Dr. Juan Mejia practiced medicine at one or more of the above locations – in particular, the Kentucky office(s).
5. Detective Paula Redman, Northern Kentucky Drug Strike Force, contacted the Kentucky Board of Medical Licensure and forwarded information from an investigation into the inappropriate prescribing of controlled substances by the licensee and Juan Mejia, M.D. As part of the investigation, an informant was sent to see Dr. Haj-Hamed with a complaint of allergies and requesting Vicodin. The informant denied any complaint of pain. The licensee prescribed ten (10) Vicodin tablets without a legitimate reason to prescribe the controlled substance. The informant visited the licensee on four occasions and received controlled substances on each visit.
6. Following a joint investigation by the Drug Enforcement Agency (DEA), the FBI, and local authorities, a search warrant was issued for properties belonging to Dr. Haj-Hamed. The licensee was arrested on September 25, 2002 and charged with 24 counts of violating KRS 218A.1404 – prescribing controlled substances contrary to the law.

7. Employee A reports that she was employed by Dr. Haj-Hamed from March 1999 through March 2000. Employee A states that part of the reason she left her job was that she was uncomfortable working there because so many patients were drug seekers. She states that the patients used Dr. Haj-Hamed's pager number at night and knew what to say to get the drugs they wanted. She states that the Bellevue office was the worst location. She says the licensee used contracts with some patients, tested patients suspected of drug seeking but they did not have the time to track the large number of patients suspected of abusing drugs. The employee states that she was never pressured by the licensee to give patients controlled substances and that the licensee signed the controlled substances prescriptions for the patients she saw.
8. Employee B states that she works at the Riverside Clinic in Cold Springs, Kentucky. She previously worked in the Cold Springs Urgent Care Center. She states that in her present employment, she feels like a drug pusher. She reports that the doctors hand out Oxycontin like it is candy. The employee states that Dr. Haj-Hamed specifically instructed the staff to tell patients calling for appointments that the doctors will prescribe the pain medication they request. He informed the staff that they were to report to him any patient complaint of not obtaining the requested drugs. Further, the licensee stated that he would fire any doctor who did not write prescriptions requested by patients. When the patient schedules an appointment, the staff pulls the chart and writes out the prescriptions they normally receive. The physicians frequently sign the prescriptions and on occasion increase the prescription.

The employee reports that if a pharmacy calls regarding an early refill of a prescription, the doctors will tell them to refill it anyway. Both the licensee and Juan Mejia, M.D., are known to refill early prescriptions. The employee states that if a KASPER report comes back and shows signs of abuse or diversion by a patient– i.e. doctor shopping – the physicians will continue to prescribe for the patient. The employee reports that the office performs a large number of injections of Valium, Nubain and Morphine to patients and also dispenses Adapex frequently. Patients of foreign nationalities will come to the office and request either Dr. Haj-Hamed or his brother. They will speak to the physicians in their native language and receive injections and prescriptions. No medical records are maintained on these individuals.

9. Paula York, Cabinet for Health Services, Drug Control and Professional Services, reports that Adapex (phentramine) is a controlled substance and that by law a physician must report to KASPER all controlled substances dispensed. A KASPER search indicates that Dr. Haj-Hamed had not reported the Adapex that was dispensed and logged at his offices.

10. Darren Yeager, RPh, of the Walgreen's Pharmacy in Highland Heights, Kentucky, reported that he had an altercation with Dr. Haj-Hamed when Mr. Yeager refused to refill a patient's methadone prescription written by the licensee. The patient had informed the pharmacist that she was in a methadone clinic and the licensee offered to write the methadone prescription when she was in his office for treatment of back pain. The licensee became livid with Mr. Yeager and reported him to the Walgreen's main office. A

second pharmacist at this location reported that on another occasion, Dr. Haj-Hamed had insisted on an early refill and the pharmacist refused. The licensee finally changed the name of the drug to circumvent the early refill issue.

11. Clarence Martin, RPh, of Martin's Cold Springs Pharmacy states that the pharmacy had become very selective and frequently refused to refill methadone and oxycontin prescriptions for patients from the Riverside Clinic in Cold Springs.

12. Chief William Cole, Bellevue Police Department, states that he has a binder of daily run reports to the Riverside Clinic in Bellevue, which is owned by Dr. Haj-Hamed. Chief Cole reports that patients are fighting in the parking lot, people are soliciting prescriptions from patients exiting the clinic and other patients are offering their prescriptions for sale. He states that he sees vehicles on the premises from Indiana, West Virginia and Ohio. The busiest day at the clinic is always the day of the week Dr. Haj-Hamed is present and seeing patients.

13. Dana Droz, RPh, JD, Cabinet for Health Services, Drug Control and Professional Services, Manager was requested to examine Dr. Haj-Hamed's prescribing patterns and identify patients with whom inappropriate prescribing may have occurred. Ms. Droz listed 26 patients whose records should be reviewed. Ms. Droz's review of the licensee's KASPER records raised the following concerns:

    1. Long-term use of one or more controlled substances;

2. Combinations of controlled substances favored by persons who abuse or divert controlled substances;
3. Patients using multiple pharmacies;
4. All patients receiving small quantities and no refills for an extended period of time; or
5. Long-term use of controlled substances for which a short-term use is generally recommended.

Ms. Droz also reported receiving complaints about excessive prescribing of controlled substances by the licensee. One complaint alleged that 90% of the prescriptions from the licensee's office are for controlled substances.

14. A Board Consultant, in reviewing seven patient charts where treatment was rendered by both the licensee and Juan Mejia, M.D., opined that,

> "In summary, the records reviewed as stated above, ... review of the KASPER Reports for the year 2000 from Dr. Haj-Hamed and Dr. Mejia and review of the charts as listed above, it does not appear that legitimate practice of medicine is occurring in the practice of Dr. Haj-Hamed and Dr. Mejia. It would appear that Dr. Mejia is slightly better with documentation and ordering diagnostic tests but neither really follow up once they have been requested. I do not believe that controlled substances were prescribed for legitimate medical purposes. I believe even more strongly now that as I stated in my July 11, 2002 note, that within a reasonable degree of medical probability, these physicians constitute a threat to existing patients and the public in general in my opinion.
>
> There is a very obvious pattern in that these doctors see patients back on a very regular basis for other than legitimate medical purposes and in all likelihood use this in order to generate billings and collections or revenue for the practice.
>
> Controlled substances are prescribed likely in order to keep the 'patients' coming back to the office for trigger point injections and other joint injections so that further billing can be generated. This is true in my opinion, within a reasonable degree of medical probability."

In the seven (7) charts reviewed by the consultant, both Dr. Haj-Hamed and Dr. Mejia had provided all or nearly all of the treatment to the patients and subsequently prescribed all or nearly all of the controlled substances to

the patients reviewed. The consultant indicated that charts lacked sufficient history and physical examination documentation. Often, there was no treatment plan, informed consent, periodic KASPER reviews, drug screens or consultations documented in the patient chart. Where there was a referral to a consultant, there was not any follow-up or any indication as to how that consultation affected the course of treatment. Of particular concern, was the failure to address problems revealed in the few KASPER reports and drug screens performed. The consultant found that often there were no evaluations for compliance with controlled substance laws and regulations on the patient's part and that there did not appear to be any indication the licensee or Dr. Mejia were compliant with the controlled substance laws and regulations either. The consultant determined that "care" rendered in the cases reviewed did not meet the minimally acceptable standard of care and in fact posed a danger to the health, safety and welfare of the patients and the public.

15. As an example of the problems found in the consultant's evaluation of the licensee and Juan Mejia, M.D.'s practice, Patient B's chart revealed a KASPER requested on May 9, 2002 and covering the period of January 1, 2001 through April 15, 2002. The consultant determined that the patient received prescriptions and filled them for controlled substances from 12 different physicians or medical locations and had them filled at 12 different pharmacies through that time period. Despite this information, there was no mention of it in the patient chart and there was no change in the medications prescribed to this patient. Additionally, there was noted to be a definite

overlap in medications as they were filled early on several occasions as well. None of this information altered the course of treatment rendered by the licensee or Juan Mejia, M.D. In fact, the patient's medications were increased in July 2002 to 60 Xanax, 90 Ultram and 60 Lorcet 10's at a time with the visits being spaced out every 20 days. Additionally, there were no medical records for the year 2000, when the patient was being prescribed Xanax, Hydrocodone and antitussive medication containing hydrocodone. Consequently, there was an overlap with the antitussive hydrocodone and the regularly prescribed Hydrocodone. The consultant found the records maintained on the patient to be inadequate, especially for continued prescription of controlled substances. Finally, the consultant stated that, "within a reasonable degree of medical probability, there is no evidence that the practice of medicine was being carried out in Dr. Haj-Hamed's 'care' of [Patient B]."

16. The Panel finds there is probable cause to believe this physician's practice constitutes a danger to the health, welfare and safety of his patients or the general public.

CONCLUSIONS OF LAW

Pursuant to KRS 13B.125(2) and based upon the information available to it, Inquiry Panel B finds there is probable cause to support the following Conclusions of Law, which serve as the legal basis for this Amended Emergency Order of Suspension:

1. The licensee's Kentucky medical license is subject to regulation and discipline by this Board.

2. KRS 311.592(1) provides that the Board may issue an emergency order suspending, limiting, or restricting a physician's license at any time an inquiry panel has probable cause to believe that a) the physician has violated the terms of an order placing him on probation; or b) a physician's practice constitutes a danger to the health, welfare and safety of his patients or the general public.
3. There is probable cause to believe that the licensee has violated KRS 311.595 (9), as illustrated by 311.597(1)(a)and (b)and (4).
4. The Panel concludes there is probable cause to believe this physician's practice constitutes a danger to the health, welfare and safety of his patients or the general public.
6. The Board may draw logical and reasonable inferences about a physician's practice by considering certain facts about a physician's practice. If there is proof that a physician has violated a provision of the Kentucky Medical Practice Act in one set of circumstances, the Board may infer that the physician will similarly violate the Medical Practice Act when presented with a similar set of circumstances. Similarly, the Board concludes that proof of a set of facts about a physician's practice presents representative proof of the nature of that physician's practice in general. Accordingly, probable cause to believe that the physician has committed certain violations in the recent past presents probable cause to believe that the physician will commit similar violations in the near future, during the course of the physician's medical practice.
7. The United States Supreme Court has ruled that it is no violation of the federal

Due Process Clause for a state agency to temporarily suspend a license, without a prior evidentiary hearing, so long as 1) the immediate action is based upon a probable cause finding that there is a present danger to the public safety; and, 2) the statute provides for a prompt post-deprivation hearing. Barry v. Barchi, 443 U.S. 55, 61 L.Ed.2d 365, 99 S.Ct. 2642 (1979); FDIC v. Mallen, 486 U.S. 230, 100 L.Ed.2d 265, 108 S.Ct. 1780 (1988) and Gilbert v. Homar, 117 S.Ct. 1807 (1997). Cf. KRS 13B.125(1).

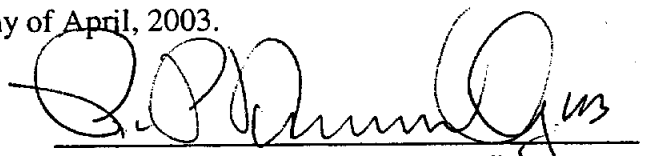
KRS 13B.125(3) provides that the Board shall conduct an emergency hearing on this emergency order within ten (10) working days of a request for such a hearing by the licensee. The licensee has been advised of his right to a prompt post-deprivation hearing under this statute.

AMENDED EMERGENCY ORDER OF SUSPENSION

Based upon the foregoing Findings of Fact and Conclusions of Law, Inquiry Panel B hereby ORDERS that the license to practice medicine in the Commonwealth of Kentucky held by Ghassan Haj-Hamead, M.D., is SUSPENDED and Dr. Haj-Hamed is prohibited from practicing medicine in the Commonwealth of Kentucky until the resolution of the Complaint setting forth the allegations discussed in this pleading or until such further Order of the Board.

Inquiry Panel B further declares that this is an EMERGENCY ORDER, effective upon receipt by the licensee.

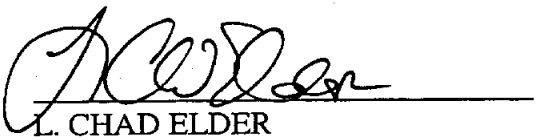
SO ORDERED this 22nd day of April, 2003.



PRESTON P. NUNNELLEY, M.D.
CHAIR, INQUIRY PANEL B

CERTIFICATE OF SERVICE

I certify that the original of this Amended Emergency Order of Suspension was delivered to Mr. C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, and copies were mailed to Ann Sheadel, Esq., Chief Hearing Officer, Division of Administrative Hearings, 1024 Capital Center Drive, Frankfort, Kentucky 40601-8204; Robert E. L. Blau, Esq., 3699 Alexandria Pike, P.O. Box 249, Cold Springs, Kentucky 41076; Robert Carran, Esq., 1005 Madison Avenue, P.O. Box 468, Covington, Kentucky 41012-0468 and W. Robert Lotz, Esq., 120 West 5th Street, Covington, Kentucky 41011 and copies were mailed via certified mail, return-receipt requested to the Fox DeMoisey, Esq., 1210 Starks Building, 455 South Fourth Avenue, Louisville, KY 40202 and Ghassan Haj-Hamad, M.D., 125 West Shelby Street, Bellevue, KY 41073 on this 22nd day of April, 2003.



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COMMONWEALTH OF KENTUCKY
KENTUCKY BOARD OF MEDICAL LICENSURE
AGENCY CASE NO. 884
ADMINISTRATIVE ACTION NO. 03-KBML-0063

GHASSAN HAJ-HAMED, MD.
License No. 33002 PETITIONER

vs.

KENTUCKY BOARD OF MEDICAL LICENSURE RESPONDENT

* * * * *

FINAL ORDER AFFIRMING THE AMENDED EMERGENCY ORDER OF SUSPENSION

* * * * *

This matter came on for hearing on April 28, 29, 30, and May 1, 2003, at the offices of the Kentucky Board of Medical Licensure in Louisville, Kentucky. The Petitioner, Ghassan Haj-Hamed, M.D., was present at the hearing and was represented by attorneys J. Fox DeMoisey and Robert Carran. The Respondent, the Kentucky Board of Medical Licensure, was present at the hearing by its representative, Betty Prater, and was represented by attorney L. Chad Elder. The hearing was conducted by Ann M. Sheadel, Chief Hearing Officer, Division of Administrative Hearings, Office of the Attorney General.

The issue in this case is the propriety of the Emergency Order of Suspension issued against the license of Dr. Haj-Hamed by the Kentucky Board of Medical Licensure on February 7, 2003, and the Amended Emergency Order of Suspension issued against the license of Dr. Haj-Hamed on April 22, 2003. After considering all of the evidence presented in this case, the Hearing Officer concludes that the Amended Emergency Order of Suspension should be affirmed.

The Hearing Officer's findings of fact, conclusions of law, and Final Order are set forth in detail below. First, however, the Hearing Officer will describe the evidence on the record of this case.

Evidence on the Record of this Case

Pursuant to KRS 13B.090(1), "findings of fact shall be based exclusively on the evidence on the record."

The evidence on the record of this case consists of: (1) the testimony of the witnesses who testified at the hearing in this matter; and (2) the exhibits that were admitted into evidence at the hearing in this matter.

The Respondent called one witness to testify:

1. [redacted] expert witness [Video Transcript of Hearing (Tr.), Tape 3 at 13:23:14 through Tape 4 at 21:46:57].

The Petitioner called five witnesses to testify:

1. William D. Leak, M.D., expert witness [Tr., Tape 1 at 13:17:46 through Tape 2 at 11:16:04];

2. Jennifer Steinmetz, one of Dr. Haj-Hamed's employees [Tr., Tape 2, 11:32:18 through 12:40:28];

3. Alisha Lattimore, one of Dr. Haj-Hamed's employees [Tr., Tape 2, 13:55:48 through 14:31:15];

4. Angela Stamper, a former employee of Dr. Haj-Hamed [Tr., Tape 2, 14:32:15 through 14:45:44]; and

5. Thoraya Hassan, one of Dr. Haj-Hamed's employees [Tr., Tape 2, 14:46:59

through 15:14:30].

Ten exhibits were admitted into evidence at the hearing in this matter:

Exhibit 1: Packet of 5 Documents from the Kentucky Board of Medical Licensure:

a. Memorandum to Panel B from Betty Prater, Medical Investigator, dated December 23, 2002, with attached Exhibits;

b. Minutes of Panel B meeting — January 16, 2003;

c. Complaint filed of record February 7, 2003;

d. Emergency Order of Suspension filed of record February 7, 2003; and

e. Amended Emergency Order of Suspension filed of record April 22, 2003.

Exhibit 2: Medical records of Patient A;

Exhibit 3: Medical records of Patients B and C;

Exhibit 4: Medical records of Patient D;

Exhibit 5: Medical records of Patients E and F;

Exhibit 6: Medical records of Patient G;[1]

Exhibit 7: Model Guidelines for the Use of Controlled Substances in Pain Treatment, adopted by the Kentucky Board of Medical Licensure 3-22-2001;

Exhibit 8: Guidelines for Prescribing Controlled Substances, adopted by the Kentucky Board of Medical Licensure 6-20-96;

Exhibit 9: "Pain & Suffering," by [redacted] M.D., published in the Lexington Herald-Leader, 11/97; and

[1]At the hearing in this matter, these patients were referenced by name. For the purpose of protecting the identities of these patients, the Hearing Officer is referring to the patients by these letter designations. The Hearing Officer has created a Patient Code List, which the Hearing Officer is making Exhibit 11 in this matter, and which the Hearing Officer is placing under seal.

Exhibit 10: "Board Member Profile: [redacted] MD DABPM, Director-at-Large," *Pain Medicine Network*, Spring 2002.

In addition, the Hearing Officer has placed one exhibit into the record after the hearing in this matter:

Exhibit 11: Patient Code List (confidential and under seal).

These exhibits have been appropriately marked and are part of the record of this case.

I. FINDINGS OF FACT

1. Inquiry Panel B of the Kentucky Board of Medical Licensure considered this matter at its meeting on January 16, 2003. The information considered by the panel members consisted of the documents that are located at Tab 1 of Exhibit 1. Those documents are:

- Memorandum from Betty Prater, medical investigator;
- Memorandum dated July 9, 2001, to Betty Prater from Detective Paula Redman, Northern Kentucky Drug Strike Force;
- Report from [redacted] dated July 11, 2002, to Agent Warner, U.S. Department of Justice, Drug Enforcement Administration;
- Report from [redacted] dated January 8, 2003, to the Kentucky Board of Medical Licensure; and
- Letter from J. Fox DeMoisey, attorney for Dr. Haj-Hamed, dated January 6, 2003, to Lloyd Vest, General Counsel, Kentucky Board of Medical Licensure, with attached Order (10-29-02) from the Pendleton Circuit Court.

2. As a result of its review, Inquiry Panel B issued an Emergency Order of Suspension against the Kentucky medical license of the Petitioner, Ghassan Haj-Hamed,

M.D., on February 7, 2003. This Emergency Order of Suspension suspended the license to practice medicine in the Commonwealth of Kentucky held by Dr. Haj-Hamed until the resolution of the Complaint issued regarding these allegations.

3. On February 7, 2003, Inquiry Panel B also issued a Complaint regarding the allegations included in the Emergency Order of Suspension.

4. On April 22, 2003, Inquiry Panel B issued an Amended Emergency Order of Suspension against the Kentucky medical license of the Petitioner, Ghassan Haj-Hamed, M.D. This Amended Emergency Order of Suspension added one paragraph to the findings of fact that had been issued in the original Emergency Order of Suspension; no other changes were made to the original Emergency Order of Suspension. The Amended Emergency Order of Suspension suspended the license to practice medicine in the Commonwealth of Kentucky held by Dr. Haj-Hamed until the resolution of the Complaint issued regarding these allegations.

5. Pursuant to the KRS 311.592(2) [*see* Conclusions of Law, below], the findings of fact in the Amended Emergency Order of Suspension constitute a rebuttable presumption that Dr. Haj-Hamed is guilty of a violation of law that constitutes immediate danger to the health, welfare, or safety of patients or the general public. Therefore, the Hearing Officer must determine exactly what statements in the Amended Emergency Order of Suspension constitute findings of fact.

The Petitioner argues that the only assertions in the Amended Emergency Order of Suspension that qualify as findings of fact to which the rebuttable presumption attaches are the assertions that certain reports and statements were provided to the Inquiry Panel.

The Petitioner argues that the contents of those reports and statements have not been specifically adopted or stated as findings of fact by the Inquiry Panel in the Emergency Order of Suspension, and, therefore, that the contents of those reports and statements do not constitute findings of fact to which the rebuttable presumption attaches.

Although it may be true that the findings of fact in the Amended Emergency Order of Suspension are inartfully written, and that the Inquiry Panel could have specified more precisely that it intended to adopt the contents of the reports and statements as findings of fact, the Hearing Officer finds that the Inquiry Panel has incorporated the contents of the reports and statements into its specific finding of fact [in ¶ 16 of the Amended Emergency Order of Suspension] that there is probable cause to believe that Dr. Haj-Hamed's practice constitutes a danger to the health, welfare, and safety of his patients or the general public. The Hearing Officer reaches this conclusion because it is clear that the Inquiry Panel's finding of fact in ¶ 16 is based on the allegations that were presented to the Inquiry Panel in the contents of the reports and statements received by the Inquiry Panel; indeed, the Inquiry Panel stated the allegations from the contents of the reports and statements in detail and with specificity in the findings of fact in the Amended Emergency Order of Suspension. Therefore, the Hearing Officer concludes that it is clear that the Inquiry Panel is specifically setting out the contents of these reports and statements as allegations against Dr. Haj-Hamed, and that these allegations are part of the finding of fact in ¶ 16 of the Amended Emergency Order of Suspension.

For these reasons, the Hearing Officer finds that the contents of these reports and statements constitute findings of fact to which the rebuttable presumption attaches

pursuant to KRS 311.592(2).

6. The allegations set out by the Inquiry Panel in its findings of fact in the Amended Emergency Order of Suspension, and to which the rebuttable presumption attaches pursuant to KRS 311.592(2), are stated here and are incorporated as findings of fact in this Final Order:

a. At all relevant times, Dr. Haj-Hamed was licensed by the Kentucky Board of Medical Licensure to practice medicine in the Commonwealth of Kentucky.

b. Dr. Haj-Hamed's medical specialty is Internal Medicine.

c. In July 2001, the Board received a grievance that Dr. Haj-Hamed was inappropriately prescribing controlled substances to patients.

d. Dr. Haj-Hamed and his brother own two Urgent Care Centers in Cold Springs, Kentucky, and Oakley, Ohio; they also operate the Riverside Clinics in Bellevue, Kentucky, Falmouth, Kentucky, Cold Springs, Kentucky, and Fairfield, Ohio.

e. As part of the investigation of the Northern Kentucky Drug Strike Force, an informant was sent as a patient to see Dr. Haj-Hamed, who prescribed controlled substances to the informant on four different occasions without a legitimate reason to prescribe the controlled substances to the informant. [¶ 5]

f. Dr. Haj-Hamed was arrested on September 25, 2002, and charged with 24 counts of violating KRS 218A.1404 — prescribing controlled substances contrary to the law. [¶ 6]

g. A former employee of Dr. Haj-Hamed stated that part of the reason that she left her job was that she was uncomfortable working there because so many

patients were drug seekers; that the patients used Dr. Haj-Hamed's page number at night and knew what to say to get the drugs they wanted; that they did not have the time to track the large number of patients suspected of abusing drugs. [¶ 7]

h. Another employee stated that she feels like a drug pusher; that Dr. Haj-Hamed specifically instructed the staff to tell patients calling for appointments that the doctors will prescribe the pain medication they request; that Dr. Haj-Hamed instructed the staff to report to him any patient complaint of not obtaining the requested drugs; that Dr. Haj-Hamed said that he would fire any doctor who did not write prescriptions requested by patients; that if a pharmacy calls regarding an early refill of a prescription the doctors will tell the pharmacy to refill the prescription anyway; that Dr. Haj-Hamed is known to refill early prescriptions; that if a KASPER report comes back and shows signs of abuse or diversion by a patient the physicians will continue to prescribe for the patient; that the office performs a large number of injections of Valium, Nubain, and Morphine to patients and also dispenses Adapex frequently; that no medical records are maintained on individuals who come in to see Dr. Haj-Hamed or his brother and speak to the doctors in their native language and receive injections and prescriptions. [¶ 8]

i. The Cabinet for Health Services, Drug Control and Professional Services, indicated that Dr. Haj-Hamed had not reported the Adapex that was dispensed and logged at his offices, as required by law. [¶ 9]

j. Two pharmacists reported altercations with Dr. Haj-Hamed when the pharmacists refused to refill prescriptions for controlled substances that had been written by Dr. Haj-Hamed. [¶ 10]

k. A third pharmacist reported that his pharmacy frequently refused to refill prescriptions for controlled substances for patients from Dr. Haj-Hamed's clinic. [¶ 11]

l. A policeman reported that he has a binder of daily run reports to one of Dr. Haj-Hamed's clinics; that patients are fighting in the parking lot; that people are soliciting prescriptions from patients exiting the clinic; that patients are offering their prescriptions for sale; that the policeman sees vehicles on the premises from Indiana, West Virginia, and Ohio; that the busiest day at the clinic is always the day of the week that Dr. Haj-Hamed is present and seeing patients. [¶ 12]

m. Dana Droz, Cabinet for Health Services, Drug Control and Professional Services, reported that her review of the licensee's KASPER records raised the following concerns: long-term use of one or more controlled substances; combinations of controlled substances favored by persons who abuse or divert controlled substances; patients using multiple pharmacies; all parties receiving small quantities and no refills for an extended period of time; long-term use of controlled substances for which a short-term use is generally recommended. [¶ 13]

n. A Board Consultant, [redacted] reviewed 7 patient charts where treatment was rendered by Dr. Haj-Hamed and reported:

> [I]t does not appear that legitimate practice of medicine is occurring in the practice of Dr. Haj-Hamed . . . . I do now believe that controlled substances were prescribed for legitimate medical purposes. I believe even more strongly not that as I stated in my July 11, 2002 note, that within a reasonable degree of medical probability, [Dr. Haj-Hamed] constitute[s] a threat to existing patients and the public in general in my opinion.

> There is a very obvious pattern in that these doctors see patients back on a very regular basis for other than legitimate medical purposes and in all likelihood use this in order to generate billings and collections or revenue for the practice.
>
> Controlled substances are prescribed likely in order to keep the "patients" coming back to the office for trigger point injections and other joint injections so that further billing can be generated. This is true in my opinion, within a reasonable degree of medical probability.

[¶ 14]

o. The consultant also indicated that charts lacked sufficient history and physical examination documentation; that often there was no treatment plan, informed consent, periodic KASPER reviews, drug screens, or consultations documented in the patient chart; that, where there was a referral to a consultant, there was not any follow-up or any indication as to how that consultation affected the course of treatment; that there was a failure to address problems revealed in the few KASPER reports and drug screens performed; that often there were no evaluations for compliance with controlled substance laws and regulations on the patient's part; that "care" rendered in the cases reviewed did not meet the minimally acceptable standard of care and in fact posed a danger to the health, safety, and welfare of the patients and the public. [¶ 14]

p. An example was given of Patient B's records, in that the consultant determined that the patient received prescriptions and filled them for controlled substances from 12 different physicians or medical locations and had them filled at 12 different pharmacies for the time period of January 1, 2001, through April 15, 2002; that, despite this information, there was no mention of it in the patient chart and there was no change in the medications prescribed to this patient; that there was a definite overlap in

medications as they were filled early on several occasions; that none of this information altered the course of treatment rendered by Dr. Haj-Hamed, but that the patient's medications were increased; that there were no medical records for the year 2000, when the patient was being prescribed Xanax, Hydrocodone, and antitussive medication containing Hydrocodone; that there was an overlap with the antitussive Hydrocodone and the regularly prescribed Hydrocodone; that the records maintained on the patient were inadequate, especially for continued prescription of controlled substances; and that there was no evidence that the practice of medicine was being carried out in Dr. Haj-Hamed's "care" of this patient. [¶ 15]

7. The Amended Emergency Order of Suspension concludes that, from the allegations set forth regarding the conduct of Dr. Haj-Hamed, there is probable cause to believe that Dr. Haj-Hamed has violated KRS 311.595(9), illustrated by 311.597(1)(a) and (b) and (4).

8. At the hearing in this matter, Dr. Haj-Hamed presented evidence to contradict some of the allegations set out in the findings of fact in the Amended Emergency Order of Suspension. While Dr. Haj-Hamed's evidence presented a conflicting view of some of the allegations set forth in the Amended Emergency Order of Suspension, that evidence did not establish that the Board's findings of fact could not "induce conviction in the minds of reasonable men" that Dr. Haj-Hamed is guilty of the allegations and of constituting an immediate danger to the public health, safety, and welfare, with two exceptions. The Hearing Officer will address each of these exceptions in turn.

9. The first exception concerns the allegations connected with an unidentified informant, contained in ¶ 5 of the Amended Emergency Order of Suspension. Both parties agreed that the identity of the informant, or the identity used by the informant in his or her visits to Dr. Haj-Hamed, has not been supplied either to the Inquiry Panel or to Dr. Haj-Hamed. In addition, no transcripts or any other documentation regarding the patient visits or Dr. Haj-Hamed's treatment of or prescriptions for the patient have been provided. Given this absence of information, the lack of identification of the patient concerned, and the impossibility of Dr. Haj-Hamed being able to respond to such general and unsupported allegations, the Hearing Officer finds that these allegations could not "induce conviction in the minds of reasonable men" that Dr. Haj-Hamed is guilty of the allegations connected with the treatment of this informant.

10. The second exception concerns the allegations based on the report of the Board's consultant, [redacted] contained in ¶¶ 14 and 15 of the Amended Emergency Order of Suspension. [redacted] provided a report to the Inquiry Panel, upon which the Inquiry Panel relied, based upon [redacted] review of certain patient records. There is no question, however, that [redacted] report was based on his review of only a portion of the patient records; [redacted] was provided less than ½ of each patient record that he was asked to review. There also is no question that a report based on such a reduced portion of the patient records cannot be a reliable report. Accordingly, the Hearing Officer finds that [redacted] report to the Inquiry Panel is not a reliable report, and that the conclusions reached in such an unreliable report, and stated as allegations in the Amended Emergency Order of Suspension, could not "induce conviction in the minds

of reasonable men" that Dr. Haj-Hamed is guilty of those allegations.

11. [redacted] report, however, is not the only piece of evidence offered in support of [redacted] opinion. The Board called [redacted] to testify at the emergency hearing, and in his testimony [redacted] reiterated his opinion based on his review of the complete medical records for 5 of the 6 patients.[2] [redacted] testified that, based upon his review of the complete medical records for these five patients, it is his opinion that Dr. Haj-Hamed's practice does not conform to the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky, and that Dr. Haj-Hamed's practice constitutes an immediate danger to the health, welfare, or safety of patients or the general public.

The Hearing Officer finds that [redacted] testimony at the emergency hearing could "induce conviction in the minds of reasonable men" that Dr. Haj-Hamed is guilty of conduct that does not conform to the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky, and that constitutes an immediate danger to the public health, safety, or welfare as alleged in ¶¶ 14 and 15 of the Amended Emergency Order of Suspension.

II. CONCLUSIONS OF LAW

1. The Inquiry Panel of the Kentucky Board of Medical Licensure is authorized to issue an emergency order suspending, limiting, or restricting a physician's license pursuant to KRS 13B.125 and KRS 311.592.

2. The general authority for an agency to take emergency action is granted in

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[2] [redacted] testified that he was not provided the complete medical records of Patient F.

KRS 13B.125(1) and (2), which state:

> (1) An agency may take emergency action affecting the legal rights, duties, privileges or immunities of named persons without a hearing only if duly authorized by statute to so act. If an agency takes emergency action, the agency shall conduct an emergency hearing in accordance with the provisions of this section.
>
> (2) An agency head or an official of an agency duly authorized by law to summarily act in emergency situations, may issue an emergency order to stop, prevent or avoid an immediate danger to the public health, safety, or welfare. The emergency order shall contain findings of fact and conclusions of law upon which the agency bases the emergency order. . . .

3. The Inquiry Panel of the Kentucky Board of Medical Licensure is authorized to take emergency action pursuant to KRS 311.592(1), which states:

> At any time when an inquiry panel [of the Kentucky Board of Medical Licensure] has probable cause to believe that a physician has violated the terms of an agreed order or violated the terms of a disciplinary order, or a physician's practice constitutes a danger to the health, welfare, and safety of his patients or the general public, the inquiry panel may issue an emergency order, in accordance with KRS 13B.125, suspending, limiting, or restricting the physician's license.

4. Pursuant to KRS 13B.125(3), a person who is required to comply with any such emergency order may request an emergency hearing to determine the propriety of the emergency order. In this case, Dr. Haj-Hamed requested and received such an emergency hearing.

5. KRS 13B.125(3) requires that, at the conclusion of the emergency hearing, "[t]he emergency order shall be affirmed if there is substantial evidence of a violation of law which constitutes an immediate danger to the public health, safety, or welfare."

6. Pursuant to KRS 13B.090(7), the burden of proof in this matter is on the

Kentucky Board of Medical Licensure.

7. Thus, the question for the Hearing Officer to address in this case is whether the Kentucky Board of Medical Licensure has proved that there is substantial evidence of a violation of law by Dr. Haj-Hamed which constitutes an immediate danger to the public health, safety, or welfare.

8. "Substantial evidence" is defined as "'evidence of substance and relevant consequence, having the fitness to induce conviction in the minds of reasonable men.'" *Kentucky State Racing Commission v. Fuller*, Ky., 481 S.W.2d 298, 308 (1972), *quoting O'Nan v. Ecklar Moore Express, Inc.*, Ky., 339 S.W.2d 466 (1960). Further, "[t]he test of substantiality of evidence is whether when taken alone or in the light of all the evidence it has sufficient probative value to induce conviction in the minds of reasonable men." *Kentucky State Racing Commission v. Fuller*, 481 S.W.2d at 308. Stated another way, substantial evidence is "evidence that a reasonable mind would accept as adequate to support a conclusion." *Black's Law Dictionary*, 7th ed., p. 580.

In addition, "if there is substantial evidence in the record to support an agency's findings, the findings will be upheld, even though there may be conflicting evidence in the record." *Kentucky Commission on Human Rights v. Fraser*, Ky., 625 S.W.2d 852, 856 (1981).

9. KRS 311.592(2) provides that a rebuttable presumption of substantial evidence of a violation of law that constitutes immediate danger to the health, welfare, or safety of patients or the general public attaches to the Inquiry Panel's findings of fact, and that hearsay may serve as a basis for the Inquiry Panel's findings. Specifically:

> For the purposes of a hearing conducted under KRS 13B.125 on an emergency order . . . , the findings of fact in the emergency order shall constitute a rebuttable presumption of substantial evidence of a violation of law that constitutes immediate danger to the health, welfare, or safety of patients or the general public. For the purposes of this hearing only, hearsay shall be admissible and may serve as a basis of the board's findings.

10. The presumption that attaches to the Inquiry Panel's findings of fact pursuant to this statutory provision may be rebutted in two ways: factually and legally.

The presumption may be rebutted factually by the evidence presented at the hearing. In order to rebut the presumption in this manner, the evidence must do more than simply present a conflicting view of the facts that have been asserted in the emergency order. Conflicting evidence alone cannot rebut the presumption; rather, in order to rebut the presumption, the evidence must establish that the Board's findings of fact could not "induce conviction in the minds of reasonable men" that: (1) the physician is guilty of the allegations asserted against him in the findings of fact; or (2) the physician's actions constitute an immediate danger to the public health, safety, or welfare.

In addition, the presumption may be rebutted legally, by demonstrating that the allegations asserted against the physician do not constitute a violation of the law that the physician has been charged with violating.

11. In the present case, the Hearing Officer concludes that the findings of fact set out in the Amended Emergency Order of Suspension establish a rebuttable presumption that there is substantial evidence that Dr. Haj-Hamed is guilty of a violation of law that constitutes immediate danger to the health, welfare, or safety of patients or the general public.

12. The specific violation of law charged against Dr. Haj-Hamed is that Dr. Haj-Hamed has engaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public or any member thereof, in violation of KRS 311.595(9), and as illustrated by KRS 311.597(1)(a) and (b) and (4), which state:

> As used in KRS 311.595(9), "dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public or any member thereof" shall include but not be limited to the following acts by a licensee:
>
> (1) Prescribes or dispenses any medication:
>
> (a) With the intent or knowledge that a medication will be used or is likely to be used other than medicinally or for an accepted therapeutic purpose;
>
> (b) With the intent to evade any law with respect to sale, use, or disposition of the medication . . . .
>
> (4) Conduct which is calculated or has the effect of bringing the medical profession into disrepute, including but not limited to any departure from, or failure to conform to the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky, and any departure from, or failure to conform to the principles of medical ethics of the American Medical Association or the code of ethics of the American Osteopathic Association. For the purposes of this subsection, actual injury to a patient need not be established.

13. Accordingly, the Hearing Officer concludes that the findings of fact set out in the Amended Emergency Order of Suspension establish a rebuttable presumption that there is substantial evidence that Dr. Haj-Hamed is guilty of a violation of KRS 311.595(9), as illustrated by KRS 311.597(1)(a) and (b) and (4), that constitutes immediate danger to the health, welfare, or safety of patients or the general public.

14. The Hearing Officer concludes that this presumption has not been rebutted

for the allegations set forth in ¶¶ 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, and 16 of the Amended Emergency Order of Suspension. First, as indicated in the above findings of fact, the evidence in the record does not establish that the Inquiry Panel's findings of fact could not "induce conviction in the minds of reasonable men" that Dr. Haj-Hamed is guilty of these allegations and that these allegations constitute an immediate danger to the public health, safety, and welfare. Accordingly, the presumption that attaches to these allegations has not been rebutted factually.

Second, the presumption that attaches to these allegations has not been rebutted legally. The allegations fit clearly within the statutory violations charged against Dr. Haj-Hamed, *i.e.*, violations of KRS 311.595(9), as illustrated by KRS 311.597(1)(a) and (b) and (4).

Accordingly, the Hearing Officer concludes that the presumption has not been rebutted for the allegations set forth in ¶¶ 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, and 16 of the Amended Emergency Order of Suspension. Consequently, as to these allegations, the Hearing Officer concludes that there is substantial evidence of a violation of law by Dr. Haj-Hamed which constitutes immediate danger to the public health, safety, or welfare.

15. The Hearing Officer concludes that the presumption has been rebutted for the allegations set forth in ¶¶ 5, 14, and 15 of the Board's findings of fact in the Amended Emergency Order of Suspension. As indicated in the above findings of fact, the evidence in the record has established that the allegations in ¶¶ 5, 14, and 15 of the Board's findings of fact in the Amended Emergency Order of Suspension could not "induce conviction in the minds of reasonable men" that Dr. Haj-Hamed is guilty of these

allegations. Accordingly, the Hearing Officer concludes that Dr. Haj-Hamed has factually rebutted the presumption concerning the allegations in ¶¶ 5, 14, and 15 in the Amended Emergency Order of Suspension.

16. The analysis does not end, however, with the factual rebuttal of the presumption for the allegations in ¶¶ 14 and 15 of the Amended Emergency Order of Suspension. The Board also presented the testimony of [redacted] at the emergency hearing. In the findings of fact, above, the Hearing Officer has found that [redacted] testimony could "induce conviction in the minds of reasonable men" that Dr. Haj-Hamed is guilty of conduct that does not conform to the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky, and that constitutes an immediate danger to the public health, safety, or welfare, as alleged in ¶¶ 14 and 15 of the Amended Emergency Order of Suspension. Accordingly, the Hearing Officer concludes that the Board has proved by a preponderance of the evidence that there is substantial evidence that Dr. Haj-Hamed is guilty of conduct that does not conform to the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky, and that constitutes an immediate danger to the public health, safety, or welfare, as alleged in ¶¶ 14 and 15 of the Amended Emergency Order of Suspension.

In addition, the Hearing Officer concludes that this conduct constitutes a violation of law, because the conduct fits within the statutory violations charged against Dr. Haj-Hamed, *i.e.*, violations of KRS 311.595(9), as illustrated by KRS 311.597(1)(a) and (b) and (4).

Consequently, the Hearing Officer concludes that the Board has proved by a

preponderance of the evidence that there is substantial evidence that Dr. Haj-Hamed is guilty of a violation of law that constitutes an immediate danger to the public health, safety, or welfare, as alleged in ¶¶ 14 and 15 of the Amended Emergency Order of Suspension..

Various Challenges

17. The Petitioner has asserted various challenges to the procedures involved in this matter. The Hearing Officer will address these challenges in turn.

Constitutional Challenge

18. The Petitioner asserts that the statutory procedures applicable to this emergency proceeding violate provisions of the United States and Kentucky Constitutions. The Hearing Officer has no authority to rule on the constitutionality of the statutes or of the statutory procedures applicable to this emergency proceeding. Those constitutional issues must be decided in another forum.

Conflict with KRS 13B

19. The Petitioner asserts that KRS 311.592(2) is in conflict with KRS 13B.020(1) and KRS 13B.090(1).

KRS 311.592(2) states, in pertinent part: "For the purposes of this hearing only, hearsay shall be admissible and may serve as a basis for the Board's findings."

KRS 13B.020(1) states, in pertinent part:

> The provisions of this chapter shall apply to all administrative hearings conducted by an agency, with the exception of those specifically exempted under this section. The provisions of this chapter shall supersede any other provisions of the Kentucky Revised Statutes and administrative regulations, unless exempted under this section, to the extent these other

provisions are duplicative or in conflict.

KRS 13B.090(1) states, in pertinent part:

> Hearsay evidence may be admissible, if it is the type of evidence that reasonable and prudent persons would rely on in their daily affairs, but it shall not be sufficient in itself to support an agency's findings of facts unless it would be admissible over objections in civil actions.

The Petitioner argues that KRS 311.592(2) is in conflict with KRS 13B.090(1), because KRS 311.592(2) allows for findings of fact to be based solely on inadmissible hearsay, while KRS 13B.090(1) requires that inadmissible hearsay shall not be sufficient in and of itself to support findings of fact. The Petitioner further argues that, pursuant to the command of KRS 13B.020(1), this conflict must be resolved in favor of KRS 13B.090(1), and inadmissible hearsay must not be allowed to support, by itself, the findings of fact in these proceedings.

The portion of KRS 13B that relates directly to emergency proceedings is KRS 13B.125, which states, in pertinent part: "The agency . . . to the extent practicable shall conduct the hearing in conformity with this chapter." [KRS 13B.125(3)] Thus, KRS 13B.125(3) permits emergency proceedings to be conducted without the application of all of the requirements of KRS 13B to the emergency proceedings. As one of the provisions of KRS 13B, KRS 13B.090(1) is clearly included in this exception to the required applicability of all of the provisions of KRS 13B to emergency proceedings.

The question to be decided, pursuant to the language in KRS 13B.125(3), is whether it is practicable to apply KRS 13B.090(1) to these emergency proceedings. KRS 13B does not define "practicable." The Hearing Officer concludes that, absent specific

direction by another statutory provision, determining to what extent it is practicable to conduct emergency proceedings in conformity with KRS Chapter 13B, and to apply KRS 13B.090(1) to the emergency proceedings, is left to the discretion of the hearing officer.

In the present situation, however, the legislature has stepped in to provide specific guidance in making the determination of the practicability of applying KRS 13B.090(1) to these emergency proceedings. By enacting KRS 311.592(2), which requires that hearsay be admissible and be permitted to serve as the basis of the findings connected with these emergency proceedings, the legislature has, in fact, made the determination that it is not practicable to apply KRS 13B.090(1) to these emergency proceedings.

Such a determination by the legislature is not in conflict with KRS Chapter 13B, because KRS 13B.125(3) clearly allows for such a determination to be made.

For these reasons, the Hearing Officer concludes that KRS 311.595(2) is not in conflict with .020(1) and KRS 13B.090(1).

Election of Procedure

20. The Petitioner argues that the Board's consultant, [redacted], should not have been allowed to testify at the emergency hearing, and that, once [redacted] was allowed to testify, his testimony should not have been considered by the Hearing Officer. The basis of the Petitioner's argument is that, once the Board relied on the rebuttable presumption that attaches to the Inquiry Panel's findings of fact pursuant to KRS 311.592(2), the Board was precluded from offering any other evidence at the emergency hearing. The Petitioner asserts that the Board must make an election: either the Board can rely on the rebuttable presumption of KRS 311.592(2), or the Board can present other

types of evidence at the emergency hearing, but the Board cannot do both.

The Hearing Officer finds no support for the Petitioner's position in the law. KRS 311.592(2) provides for one method of establishing substantial evidence at an emergency hearing. There is no indication in that statute, or in KRS 13B.125, that other methods of establishing substantial evidence cannot be used in conjunction with the method provided in KRS 311.592(2).

Therefore, the Hearing Officer concludes that there is no bar to considering the testimony of Dr. Kennedy in this matter.

Immediate Danger

21. The Petitioner asserts that, as a matter of law, Dr. Haj-Hamed does not constitute an immediate danger to the public health, safety, or welfare, because the Pendleton Circuit Court issued an Order on October 29, 2002, that states:

> IT IS HEREBY ORDERED that Dr. Ghassan Haj-Hamed's bond conditions are as follows:
>
> 1. That Dr. Ghassan Haj-Hamed is permitted to practice medicine, but is restricted in his practice to write prescriptions that are not controlled substances except that the doctor is allowed to continue to write prescriptions through his DEA license for patients who are admitted patients in hospitals or in nursing home facilities.

The Petitioner argues that, because Dr. Haj-Hamed's ability to write prescriptions for controlled substances has been restricted by the Pendleton Circuit Court, Dr. Haj-Hamed cannot constitute an immediate danger to the public health, safety, or welfare.

The Hearing Officer disagrees. First, the Order of the Pendleton Circuit Court does not address all of the concerns addressed by the Inquiry Panel in its Amended Emergency

Order of Suspension. Second, the jurisdiction and responsibility of the Kentucky Board of Medical Licensure is independent of the jurisdiction of the Pendleton Circuit Court.

Therefore, the Hearing Officer concludes that the Order of the Pendleton Circuit Court does not constitute a legal bar to determining that Dr. Haj-Hamed constitutes an immediate danger to the public health, safety, or welfare.

Conclusion

22. In sum, the Hearing Officer concludes that the Kentucky Board of Medical Licensure has proved that there is substantial evidence that Dr. Haj-Hamed is guilty of a violation of law that constitutes an immediate danger to the public health, safety, or welfare, as alleged in the Amended Emergency Order of Suspension. Accordingly, pursuant to KRS 13B.125(3), the Hearing Officer must affirm the Amended Emergency Order of Suspension

III. FINAL ORDER

Based on the foregoing findings of facts and conclusions of law, IT IS HEREBY ORDERED:

1. The Amended Emergency Order of Suspension issued against the Kentucky medical license of Ghassan Haj-Hamed, M.D., is affirmed.

2. Exhibit 11 is placed under seal to protect the identities of the patients involved in this case.

3. At the request of the parties, this Final Order is being mailed to the parties by first-class mail, postage pre-paid.

4. This Final Order is effective immediately.

IV. NOTICE OF APPEAL RIGHTS

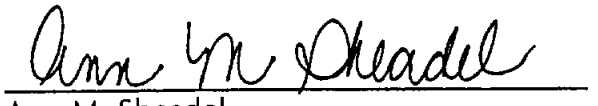
Pursuant to KRS 13B.125(4), this Order is a final Order of the Kentucky Board of Medical Licensure; any party aggrieved by the decision may appeal to Circuit Court in the same manner as provided in KRS 13B.140.

KRS 13B.140 states in part:

> (1) All final orders of an agency shall be subject to judicial review in accordance with the provisions of this chapter. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

Pursuant to KRS 23A.010(4), "Such review [by the Circuit Court] shall not constitute an appeal but an original action." Some courts have interpreted this language to mean that a summons must be served upon filing an appeal in Circuit Court.

SO ORDERED this 8th day of May, 2003.



Ann M. Sheadel
Chief Hearing Officer
Division of Administrative Hearings
Office of the Attorney General
1024 Capital Center Drive, Ste. 200
Frankfort, Kentucky 40601-8204
(502) 696-5442
(502) 573-8315 - FAX

CERTIFICATE OF SERVICE

I hereby certify that the original of this FINAL ORDER was hand-delivered on the 9th day of May, 2003, to:

JILL LUN
KY BOARD OF MEDICAL LICENSURE
HURSTBOURNE OFFICE PARK STE 1B
310 WHITTINGTON PKY
LOUISVILLE KY 40222

for filing; and a true copy was sent on the 8th day of May, 2003, by first-class mail, postage prepaid, to:

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[Hand-delivery]

Becky Crockett
DOCKET COORDINATOR
030063fc

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

GHASSAN HAJ HAMED, M.D.

ORDER & ENTRY

This matter is before the undersigned for the purpose of addressing the March 12, 2003, Notice of Opportunity for Hearing issued by the State Medical Board of Ohio in the above captioned matter, which was based upon a February 7, 2003, Emergency Order of Suspension of the license of Ghassan Haj-Hamed, M.D. by the Kentucky Board of Medical Licensure. Later occurring action by the Kentucky Board relative to the February 2003 Emergency Order has subsequently come to the attention of the Ohio Board. Accordingly, to promote administrative efficiency, it is hereby ORDERED that the March 12, 2003 Notice of Opportunity for Hearing issued by the Ohio Board be and is hereby DISMISSED, without prejudice to future action.

So ORDERED and entered upon the Journal of the State Medical Board of Ohio on the 14th day of May, 2003.

Anand G. Garg, M.D.
Secretary

State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.state.oh.us/med/

March 12, 2003

Ghassan Haj-Hamed, M.D.
4056 Clifton Ridge
Cincinnati, Ohio 45220

Dear Doctor Haj-Hamed:

In accordance with R.C. Chapter 119., you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

(1) On or about February 7, 2003, the Kentucky Board of Medical Licensure (Kentucky Board) filed a Complaint against your license. Further, on or about February 7, 2003, the Kentucky Board filed an Emergency Order of Suspension, effective upon your receipt of the Order, suspending your Kentucky license to practice medicine and prohibiting you from practicing medicine in Kentucky, until resolution of the above Kentucky Board Complaint.

Copies of the Kentucky Board Complaint and Emergency Order of Suspension are attached hereto and incorporated herein.

The Kentucky Board Emergency Order of Suspension, as alleged in paragraph one (1) above, constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as that clause is used in R.C. 4731.22(B)(22).

Pursuant to R.C. Chapter 119., you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty days of the time of mailing of this notice.

You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments,

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or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand or place you on probation.

Please note that, whether or not you request a hearing, R.C. 4731.22(L), provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,

Anand G. Garg, M.D. /TAD

Anand G. Garg, M.D.
Secretary

AGG/jag
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5151 3682
RETURN RECEIPT REQUESTED

Fox Demoisey, Esq.
1210 Starks Building
455 South Fourth Avenue
Louisville, Kentucky 40202

CERTIFIED MAIL # 7000 0600 0024 5151 3668
RETURN RECEIPT REQUESTED

FILED OF RECORD
FEB 07 2003
K.B.M.L.

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 884

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY GHASSAN HAJ-HAMED, M.D., LICENSE NO. 33002, 125 WEST SHELBY STREET, BELLEVUE, KENTUCKY 41073

AND

THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY JUAN C. MEJIA, M.D., LICENSE NO. 35414, 200 FAIRFIELD AVENUE, BELLEVUE, KENTUCKY 41073

COMPLAINT

Comes now the Complainant, Preston P. Nunnelley, M.D., Chair of the Kentucky Board of Medical Licensure's Panel B, and on behalf of the Panel which met on January 16, 2002, states for its Complaint against the licensees, Ghassan Haj-Hamed, M.D. and Juan C. Mejia, M.D., as follows:

1. At all relevant times, Ghassan Haj-Hamed, M.D. and Juan C. Mejia, M.D., were licensed by the Board to practice medicine in the Commonwealth of Kentucky.
2. The licensees' medical specialty is Internal Medicine.
3. In July 2001, the Board received a grievance that the licensees were inappropriately prescribing controlled substances to patients.
4. Dr. Haj-Hamed and his brother, Dr. Husam Hamed own two Urgent Care Centers in Cold Springs, Kentucky and Oakley, Ohio. The licensee and his brother also operate the Riverside Clinics in Bellevue, Kentucky; Falmouth, Kentucky; Cold Springs, Kentucky and Fairfield, Ohio. Dr. Juan Mejia

practiced medicine at one or more of the above locations – in particular, the Kentucky office(s).

5. Detective Paula Redman, Northern Kentucky Drug Strike Force, contacted the Kentucky Board of Medical Licensure and forwarded information from an investigation into the inappropriate prescribing of controlled substances by the licensees. As part of the investigation, an informant was sent to see Dr. Haj-Hamed with a complaint of allergies and requesting Vicodin. The informant denied any complaint of pain. The licensee prescribed ten (10) Vicodin tablets without a legitimate reason to prescribe the controlled substance. The informant visited the licensee on four occasions and received controlled substances on each visit.

6. Following a joint investigation by the Drug Enforcement Agency (DEA), the FBI, and local authorities, a search warrant was issued for properties belonging to Dr. Haj-Hamed. The licensee was arrested on September 25, 2002 and charged with 24 counts of violating KRS 218A.1404 – prescribing controlled substances contrary to the law.

7. Employee A reports that she was employed by Dr. Haj-Hamed from March 1999 through March 2000. Employee A states that part of the reason she left her job was that she was uncomfortable working there because so many patients were drug seekers. She states that the patients used Dr. Haj-Hamed's pager number at night and knew what to say to get the drugs they wanted. She states that the Bellevue office was the worst location. She says the licensee used contracts with some patients, tested patients suspected of drug

seeking but they did not have the time to track the large number of patients suspected of abusing drugs. The employee states that she was never pressured by the licensee to give patients controlled substances and that the licensee signed the controlled substances prescriptions for the patients she saw.

8. Employee B states that she works at the Riverside Clinic in Cold Springs, Kentucky. She previously worked in the Cold Springs Urgent Care Center. She states that in her present employment, she feels like a drug pusher. She reports that the doctors hand out Oxycontin like it is candy. The employee states that Dr. Haj-Hamed specifically instructed the staff to tell patients calling for appointments that the doctors will prescribe the pain medication they request. He informed the staff that they were to report to him any patient complaint of not obtaining the requested drugs. Further, the licensee stated that he would fire any doctor who did not write prescriptions requested by patients. When the patient schedules an appointment, the staff pulls the chart and writes out the prescriptions they normally receive. The physicians frequently sign the prescriptions and on occasion increase the prescription. The employee reports that if a pharmacy calls regarding an early refill of a prescription, the doctors will tell them to refill it anyway. Both the licensees are known to refill early prescriptions. The employee states that if a KASPER report comes back and shows signs of abuse or diversion by a patient– i.e. doctor shopping – the physicians will continue to prescribe for the patient. The employee reports that the office performs a large number of injections of Valium, Nubain and Morphine to patients and also dispenses Adapex

frequently. Patients of foreign nationalities will come to the office and request either Dr. Haj-Hamed or his brother. They will speak to the physicians in their native language and receive injections and prescriptions. No medical records are maintained on these individuals.

9. Paula York, Cabinet for Health Services, Drug Control and Professional Services, reports that that Adapex (phentramine) is a controlled substance and that by law a physician must report to KASPER all controlled substances dispensed. A KASPER search indicates that Dr. Haj-Hamed had not reported the Adapex that was dispensed and logged at his offices.

10. Darren Yeager, RPh, of the Walgreen's Pharmacy in Highland Heights, Kentucky, reported that he had an altercation with Dr. Haj-Hamed when Mr. Yeager refused to refill a patient's methadone prescription written by the licensee. The patient had informed the pharmacist that she was in a methadone clinic and the licensee offered to write the methadone prescription when she was in his office for treatment of back pain. The licensee became livid with Mr. Yeager and reported him to the Walgreen's main office. A second pharmacist at this location reported that on another occasion, Dr. Haj-Hamed had insisted on an early refill and the pharmacist refused. The licensee finally changed the name of the drug to circumvent the early refill issue.

11. Clarence Martin, RPh, of Martin's Cold Springs Pharmacy states that the pharmacy had become very selective and frequently refused to refill

methadone and oxycontin prescriptions for patients from the Riverside Clinic in Cold Springs.

12. Chief William Cole, Bellevue Police Department, states that he has a binder of daily run reports to the Riverside Clinic in Bellevue, which is owned by Dr. Haj-Hamed. Chief Cole reports that patients are fighting in the parking lot, people are soliciting prescriptions from patients exiting the clinic and other patients are offering their prescriptions for sale. He states that he sees vehicles on the premises from Indiana, West Virginia and Ohio. The busiest day at the clinic is always the day of the week Dr. Haj-Hamed is present and seeing patients.

13. Danna Droz, RPh, JD, Cabinet for Health Services, Drug Control and Professional Services, Manager was requested to examine Dr. Haj-Hamed's prescribing patterns and identify patients with whom inappropriate prescribing may have occurred. Ms. Droz listed 26 patients whose records should be reviewed. Ms. Droz's review of the licensee's KASPER records raised the following concerns:

    - Long-term use of one or more controlled substances;
    - Combinations of controlled substances favored by persons who abuse or divert controlled substances;
    - Patients using multiple pharmacies;
    - All patients receiving small quantities and no refills for an extended period of time; or
    - Long-term use of controlled substances for which a short-term use is generally recommended.

    Ms. Droz also reported receiving complaints about excessive prescribing of controlled substances by the licensee. One complaint alleged that 90% of the prescriptions from the licensee's office are for controlled substances.

14. A Board Consultant, in reviewing seven patient charts where treatment was rendered by both licensees, opined that,

> "In summary, the records reviewed as stated above, ... review of the KASPER Reports for the year 2000 from Dr. Haj-Hamed and Dr. Mejia and review of the charts as listed above, it does not appear that legitimate practice of medicine is occurring in the practice of Dr. Haj-Hamed and Dr. Mejia. It would appear that Dr. Mejia is slightly better with documentation and ordering diagnostic tests but neither really follow up once they have been requested. I do not believe that controlled substances were prescribed for legitimate medical purposes. I believe even more strongly now that as I stated in my July 11, 2002 note, that within a reasonable degree of medical probability, these physicians constitute a threat to existing patients and the public in general in my opinion.
>
> There is a very obvious pattern in that these doctors see patients back on a very regular basis for other than legitimate medical purposes and in all likelihood use this in order to generate billings and collections or revenue for the practice.
>
> Controlled substances are prescribed likely in order to keep the 'patients' coming back to the office for trigger point injections and other joint injections so that further billing can be generated. This is true in my opinion, within a reasonable degree of medical probability."

In the seven (7) charts reviewed by the consultant, both Dr. Haj-Hamed and Dr. Mejia had provided all or nearly all of the treatment to the patients and subsequently prescribed all or nearly all of the controlled substances to the patients reviewed. The consultant indicated that charts lacked sufficient history and physical examination documentation. Often, there was no treatment plan, informed consent, periodic KASPER reviews, drug screens or consultations documented in the patient chart. Where there was a referral to a consultant, there was not any follow-up or any indication as to how that consultation affected the course of treatment. Of particular concern, was the failure to address problems revealed in the few KASPER reports and drug

screens performed. The consultant found that often there were no evaluations for compliance with controlled substance laws and regulations on the patient's part and that there did not appear to be any indication the licensees were compliant with the controlled substance laws and regulations either. The consultant determined that "care" rendered in the cases reviewed did not meet the minimally acceptable standard of care and in fact posed a danger to the health, safety and welfare of the patients and the public.

15. As an example of the problems found in the consultant's evaluation of the licensees' practice, Patient B's chart revealed a KASPER requested on May 9, 2002 and covering the period of January 1, 2001 through April 15, 2002. The consultant determined that the patient received prescriptions and filled them for controlled substances from 12 different physicians or medical locations and had them filled at 12 different pharmacies through that time period. Despite this information, there was no mention of it in the patient chart and there was no change in the medications prescribed to this patient. Additionally, there was noted to be a definite overlap in medications as they were filled early on several occasions as well. None of this information altered the course of treatment rendered by the licensees. In fact, the patient's medications were increased in July 2002 to 60 Xanax, 90 Ultram and 60 Lorcet 10's at a time with the visits being spaced out every 20 days. Additionally, there were no medical records for the year 2000, when the patient was being prescribed Xanax, Hydrocodone and antitussive medication containing hydrocodone. Consequently, there was an overlap with the

antitussive hydrocodone and the regularly prescribed Hydrocodone. The consultant found the records maintained on the patient to be inadequate, especially for continued prescription of controlled substances. Finally, the consultant stated that, "within a reasonable degree of medical probability, there is no evidence that the practice of medicine was being carried out in Dr. Haj-Hamed's 'care' of [Patient B]."

16. By their conduct, the licensees have violated KRS 311.595(9), as illustrated by 311.597(1)(a), (b) and (d) and (4). Accordingly, legal grounds exist for disciplinary action against their Kentucky medical licenses.

17. The licensees are directed to respond to the allegations delineated in the Complaint within thirty (30) days of service thereof and is further given notice that:

    a. Their failure to respond may be taken as an admission of the charges;

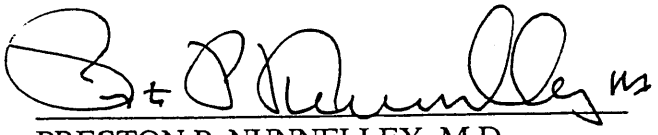
    b. They may appear alone or with counsel, may cross-examine all prosecution witnesses and offer evidence in his defense.

18. NOTICE IS HEREBY GIVEN that a hearing on this Complaint is scheduled for August 6 – 8, 2003 at 9:00 a.m., Eastern Standard Time, at the Kentucky Board of Medical Licensure, Hurstbourne Office Park, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Said hearing shall be held pursuant to the Rules and Regulations of the Kentucky Board of Medical Licensure. This hearing shall proceed as scheduled and the hearing date shall only be modified by leave of the Hearing Officer upon a showing of good cause.

WHEREFORE, Complainant prays that appropriate disciplinary action

be taken against the licenses to practice medicine held by Ghassan Haj-Hamed, M.D. and Juan C. Mejia, M.D

This 7th day of February, 2003.



PRESTON P. NUNNELLEY, M.D.
CHAIR, INQUIRY PANEL B

CERTIFICATE OF SERVICE

I certify that the original of this Complaint was delivered to Mr. C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, and a copy was mailed to Division of Administrative Hearings, 1024 Capital Center Drive, Frankfort, Kentucky 40601-8204 and a copy was sent via certified mail, return-receipt requested to Ghassan Haj-Hamed, M.D., 125 West Shelby Street, Bellevue, Kentucky 41073, Honorable Fox Demoisey, 1210 Starks Building, 455 South Fourth Avenue, Louisville, KY 40202, and Juan C. Mejia, M.D., 200 Fairfield Ave., Bellevue, Kentucky 41073 on this 7th day of February, 2003.

L. CHAD ELDER
Assistant General Counsel
Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
Louisville, Kentucky 40222
(502) 429-8046

FILED OF RECORD
FEB 07 2003
K.B.M.L.

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 884

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY GHASSAN HAJ-HAMED, M.D., LICENSE NO. 33002, 125 WEST SHELBY STREET, BELLEVUE, KENTUCKY 42431

EMERGENCY ORDER OF SUSPENSION

The Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through its Inquiry Panel B, considered this matter at its January 16, 2003 meeting. At that meeting, Inquiry Panel B considered a memorandum from Betty Prater, Medical Investigator, dated December 23, 2002, and the licensee's response as provided by his attorney, Fox Demoisey dated January 6, 2003 and the report of a Board Consultant dated January 8, 2003. Having considered all of this information and being sufficiently advised, Inquiry Panel B ENTERS the following EMERGENCY ORDER OF SUSPENSION, in accordance with KRS 311.592(1) and 13B.125(1):

FINDINGS OF FACT

Pursuant to KRS 13B.125(2) and based upon the information available to it, Inquiry Panel B concludes there is probable cause to make the following Findings of Fact, which support its Emergency Order of Suspension:

1. At all relevant times, Ghassan Haj-Hamed, M.D., was licensed by the Board to practice medicine in the Commonwealth of Kentucky.
2. The license's medical specialty is Internal Medicine.
3. In July 2001, the Board received a grievance that the licensee and Juan Mejia, M.D. were inappropriately prescribing controlled substances to patients.

4. Dr. Haj-Hamed and his brother, Dr. Husam Hamed own two Urgent Care Centers in Cold Springs, Kentucky and Oakley, Ohio. The licensee and his brother also operate the Riverside Clinics in Bellevue, Kentucky; Falmouth, Kentucky; Cold Springs, Kentucky and Fairfield, Ohio. Dr. Juan Mejia practiced medicine at one or more of the above locations – in particular, the Kentucky office(s).
5. Detective Paula Redman, Northern Kentucky Drug Strike Force, contacted the Kentucky Board of Medical Licensure and forwarded information from an investigation into the inappropriate prescribing of controlled substances by the licensee and Juan Mejia, M.D. As part of the investigation, an informant was sent to see Dr. Haj-Hamed with a complaint of allergies and requesting Vicodin. The informant denied any complaint of pain. The licensee prescribed ten (10) Vicodin tablets without a legitimate reason to prescribe the controlled substance. The informant visited the licensee on four occasions and received controlled substances on each visit.
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7. Employee A reports that she was employed by Dr. Haj-Hamed from March 1999 through March 2000. Employee A states that part of the reason she left her job was that she was uncomfortable working there because so many

patients were drug seekers. She states that the patients used Dr. Haj-Hamed's pager number at night and knew what to say to get the drugs they wanted. She states that the Bellevue office was the worst location. She says the licensee used contracts with some patients, tested patients suspected of drug seeking but they did not have the time to track the large number of patients suspected of abusing drugs. The employee states that she was never pressured by the licensee to give patients controlled substances and that the licensee signed the controlled substances prescriptions for the patients she saw.

8. Employee B states that she works at the Riverside Clinic in Cold Springs, Kentucky. She previously worked in the Cold Springs Urgent Care Center. She states that in her present employment, she feels like a drug pusher. She reports that the doctors hand out Oxycontin like it is candy. The employee states that Dr. Haj-Hamed specifically instructed the staff to tell patients calling for appointments that the doctors will prescribe the pain medication they request. He informed the staff that they were to report to him any patient complaint of not obtaining the requested drugs. Further, the licensee stated that he would fire any doctor who did not write prescriptions requested by patients. When the patient schedules an appointment, the staff pulls the chart and writes out the prescriptions they normally receive. The physicians frequently sign the prescriptions and on occasion increase the prescription. The employee reports that if a pharmacy calls regarding an early refill of a prescription, the doctors will tell them to refill it anyway. Both the licensee and Juan Mejia, M.D., are known to refill early prescriptions. The employee

states that if a KASPER report comes back and shows signs of abuse or diversion by a patient– i.e. doctor shopping – the physicians will continue to prescribe for the patient. The employee reports that the office performs a large number of injections of Valium, Nubain and Morphine to patients and also dispenses Adapex frequently. Patients of foreign nationalities will come to the office and request either Dr. Haj-Hamed or his brother. They will speak to the physicians in their native language and receive injections and prescriptions. No medical records are maintained on these individuals.

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licensee finally changed the name of the drug to circumvent the early refill issue.

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    1. Long-term use of one or more controlled substances;
    2. Combinations of controlled substances favored by persons who abuse or divert controlled substances;
    3. Patients using multiple pharmacies;
    4. All patients receiving small quantities and no refills for an extended period of time; or

5. Long-term use of controlled substances for which a short-term use is generally recommended.

Ms. Droz also reported receiving complaints about excessive prescribing of controlled substances by the licensee. One complaint alleged that 90% of the prescriptions from the licensee's office are for controlled substances.

14. A Board Consultant, in reviewing seven patient charts where treatment was rendered by both the licensee and Juan Majia, M.D., opined that,

> "In summary, the records reviewed as stated above, ... review of the KASPER Reports for the year 2000 from Dr. Haj-Hamed and Dr. Mejia and review of the charts as listed above, it does not appear that legitimate practice of medicine is occurring in the practice of Dr. Haj-Hamed and Dr. Mejia. It would appear that Dr. Mejia is slightly better with documentation and ordering diagnostic tests but neither really follow up once they have been requested. I do not believe that controlled substances were prescribed for legitimate medical purposes. I believe even more strongly now that as I stated in my July 11, 2002 note, that within a reasonable degree of medical probability, these physicians constitute a threat to existing patients and the public in general in my opinion.
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> Controlled substances are prescribed likely in order to keep the 'patients' coming back to the office for trigger point injections and other joint injections so that further billing can be generated. This is true in my opinion, within a reasonable degree of medical probability."

In the seven (7) charts reviewed by the consultant, both Dr. Haj-Hamed and Dr. Mejia had provided all or nearly all of the treatment to the patients and subsequently prescribed all or nearly all of the controlled substances to the patients reviewed. The consultant indicated that charts lacked sufficient history and physical examination documentation. Often, there was no treatment plan, informed consent, periodic KASPER reviews, drug screens or

consultations documented in the patient chart. Where there was a referral to a consultant, there was not any follow-up or any indication as to how that consultation affected the course of treatment. Of particular concern, was the failure to address problems revealed in the few KASPER reports and drug screens performed. The consultant found that often there were no evaluations for compliance with controlled substance laws and regulations on the patient's part and that there did not appear to be any indication the licensee or Dr. Mejia were compliant with the controlled substance laws and regulations either. The consultant determined that "care" rendered in the cases reviewed did not meet the minimally acceptable standard of care and in fact posed a danger to the health, safety and welfare of the patients and the public.

15. As an example of the problems found in the consultant's evaluation of the licensee and Juan Mejia, M.D.'s practice, Patient B's chart revealed a KASPER requested on May 9, 2002 and covering the period of January 1, 2001 through April 15, 2002. The consultant determined that the patient received prescriptions and filled them for controlled substances from 12 different physicians or medical locations and had them filled at 12 different pharmacies through that time period. Despite this information, there was no mention of it in the patient chart and there was no change in the medications prescribed to this patient. Additionally, there was noted to be a definite overlap in medications as they were filled early on several occasions as well. None of this information altered the course of treatment rendered by the licensee or Juan Majie, M.D. In fact, the patient's medications were increased

in July 2002 to 60 Xanax, 90 Ultram and 60 Lorcet 10's at a time with the visits being spaced out every 20 days. Additionally, there were no medical records for the year 2000, when the patient was being prescribed Xanax, Hydrocodone and antitussive medication containing hydrocodone. Consequently, there was an overlap with the antitussive hydrocodone and the regularly prescribed Hydrocodone. The consultant found the records maintained on the patient to be inadequate, especially for continued prescription of controlled substances. Finally, the consultant stated that, "within a reasonable degree of medical probability, there is no evidence that the practice of medicine was being carried out in Dr. Haj-Hamed's 'care' of [Patient B]."

CONCLUSIONS OF LAW

Pursuant to KRS 13B.125(2) and based upon the information available to it, Inquiry Panel B finds there is probable cause to support the following Conclusions of Law, which serve as the legal basis for this Emergency Order of Suspension:

1. The licensee's Kentucky medical license is subject to regulation and discipline by this Board.
2. KRS 311.592(1) provides that the Board may issue an emergency order suspending, limiting, or restricting a physician's license at any time an inquiry panel has probable cause to believe that a) the physician has violated the terms of an order placing him on probation; or b) a physician's practice constitutes a danger to the health, welfare and safety of his patients or the general public.

3. There is probable cause to believe that the licensee has violated KRS 311.595 (9), as illustrated by 311.597(1)(a)and (b)and (4).

4. The Panel concludes there is probable cause to believe this physician's practice constitutes a danger to the health, welfare and safety of his patients or the general public.

6. The Board may draw logical and reasonable inferences about a physician's practice by considering certain facts about a physician's practice. If there is proof that a physician has violated a provision of the Kentucky Medical Practice Act in one set of circumstances, the Board may infer that the physician will similarly violate the Medical Practice Act when presented with a similar set of circumstances. Similarly, the Board concludes that proof of a set of facts about a physician's practice presents representative proof of the nature of that physician's practice in general. Accordingly, probable cause to believe that the physician has committed certain violations in the recent past presents probable cause to believe that the physician will commit similar violations in the near future, during the course of the physician's medical practice.

7. The United States Supreme Court has ruled that it is no violation of the federal Due Process Clause for a state agency to temporarily suspend a license, without a prior evidentiary hearing, so long as 1) the immediate action is based upon a probable cause finding that there is a present danger to the public safety; and, 2) the statute provides for a prompt post-deprivation hearing. Barry v. Barchi, 443 U.S. 55, 61 L.Ed.2d 365, 99 S.Ct. 2642 (1979);

FDIC v. Mallen, 486 U.S. 230, 100 L.Ed.2d 265, 108 S.Ct. 1780 (1988) and Gilbert v. Homar, 117 S.Ct. 1807 (1997). Cf. KRS 13B.125(1).

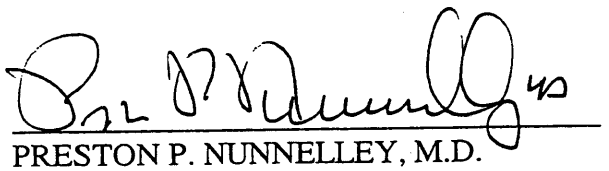
KRS 13B.125(3) provides that the Board shall conduct an emergency hearing on this emergency order within ten (10) working days of a request for such a hearing by the licensee. The licensee has been advised of his right to a prompt post-deprivation hearing under this statute.

EMERGENCY ORDER OF SUSPENSION

Based upon the foregoing Findings of Fact and Conclusions of Law, Inquiry Panel B hereby ORDERS that the license to practice medicine in the Commonwealth of Kentucky held by Ghassan Haj-Hamead, M.D., is SUSPENDED and Dr. Haj-Hamed is prohibited from practicing medicine in the Commonwealth of Kentucky until the resolution of the Complaint setting forth the allegations discussed in this pleading or until such further Order of the Board.

Inquiry Panel B further declares that this is an EMERGENCY ORDER, effective upon receipt by the licensee.

SO ORDERED this 7th day of February, 2003.



PRESTON P. NUNNELLEY, M.D.
CHAIR, INQUIRY PANEL B

CERTIFICATE OF SERVICE

I certify that the original of this Emergency Order of Suspension was delivered to Mr. C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, and copies were mailed via certified mail, return-receipt requested to the Honorable Fox Demoisey, M.D., 1210 Starks Building, 455 South Fourth Avenue, Louisville, KY 40202 and Ghassan Haj-

Hamad, M.D., 125 West Shelby Street, Bellevue, KY 41073 on this 7th day of February, 2003.

L. CHAD ELDER
Assistant General Counsel
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